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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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THOMAS M. SHIELDS,  
*Plaintiff,*  
*vs.* **in Error,**  
COLUMBIA RIVER LUMBER COM-  
PANY, a Corporation,  
*Defendant.*  
**in Error,**

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Transcript of Record

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Writ of Error to THE UNITED STATES DIS-  
TRICT COURT FOR THE WESTERN DISTRICT  
OF WASHINGTON, NORTHERN DIVISION

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Filed

MAR 19 1915

F. D. Monckton,  
Clerk.



United States  
Circuit Court of Appeals

THOMAS M. SHIELDS,  
*Plaintiff,*  
*vs.* **in Error,**  
COLUMBIA RIVER LUMBER COM-  
PANY, a Corporation,  
*Defendant.*  
**in Error,**

# Transcript of Record

Writ of Error to THE UNITED STATES DIS-  
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OF WASHINGTON, NORTHERN DIVISION





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*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
<i>Plaintiff,</i>	
<i>Defendant.</i>	

**NAMES AND ADDRESSES OF COUNSEL.**

EDGAR S. HADLEY, Esq., Attorney for Plaintiff in  
Error, 304 Pioneer Building, Seattle, Washington.

WILL H. THOMPSON, Esq., Attorney for Plaintiff in  
Error, Lyon Building, Seattle, Washington.

GEORGE D. EMERY, Esq., Attorney for Defendant in  
Error, 419 Central Building, Seattle, Washington.

*In the United States District Court, Western District of  
Washington, Northern Division*

THOMAS M. SHIELDS,	} No. 2527
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
<i>Plaintiff.</i>	<i>Defendant.</i>

### AMENDED COMPLAINT.

It having been stipulated and agreed between the parties to this action, through their respective attorneys, that the plaintiff might file in this action his amended complaint. Now, therefore, as a cause of action against the defendant this plaintiff alleges as follows, to-wit:

#### I.

That the defendant, the Columbia River Lumber Company, during all the times mentioned in this complaint was and is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, and is qualified to do business in the State of Washington.

#### II.

That on and prior to the 23rd day of August, 1911, the defendant was the owner of certain timber and timber lands situated in Chelan County in the State of Washington, and was desirous of selling said property, and in order to negotiate the sale of said property employed one Thomas Winsor to act as their agent.

#### III.

That the said Thomas Winsor, acting under his said employment, in writing negotiated for and on behalf of

said defendant, the sale of said property, timber and timber lands, to one F. P. Kellogg, for a corporation to be thereafter organized by him; and thereupon, said defendant entered into an agreement, in writing, with said Thomas Winsor, for the delivery to the Union Trust Company, of Chicago, Illinois, for said Thomas Winsor, in consideration of his services, \$10,000.00 of stock of said corporation to be organized by the said F. P. Kellogg, which corporation was organized in pursuance of said agreement and is known as the "F. P. Kellogg Lumber Company"; a copy of which agreement in writing is hereto attached and marked "Exhibit A", and made a part of this complaint, the same as if in this paragraph set out in full.

#### IV.

That such things were had and done in pursuance of said agreement "Exhibit A" and the agreements therein referred to, by the defendant and F. P. Kellogg; that the F. P. Kellogg Lumber Company was organized as a corporation to take over said property, and the defendant transferred and delivered to it the property, timber and timber lands herein referred to, and mentioned and described in said "Exhibit A" and in the agreements therein referred to; and yet the defendant has failed and refused to deliver to said Union Trust Company of Chicago, Illinois, in pursuance of said agreement "Exhibit A", or to said Thomas Winsor, or to anyone acting in his behalf, the said \$10,000. in shares of stock of the said F. P. Kellogg Lumber Company, or to in any manner compensate him therefor; that said defendant has obtained from said



F. P. Kellogg and the F. P. Kellogg Lumber Company all the capital stock of the said F. P. Kellogg Lumber Company, including the \$10,000.00 shares of stock to be held for the benefit of said Thomas Winsor, and has wrongfully converted the said shares of stock, of the value of \$10,000.00, to its own use and benefit, and now maintains and asserts that neither said Thomas Winsor, nor this plaintiff claiming under him, is entitled to any compensation whatsoever for the said services of said Thomas Winsor upon behalf of the defendant, whereby said stock has become wholly lost to the plaintiff, to the damage of the plaintiff \$10,000.00 with interest thereon at six per cent. from the 23rd day of August, 1911.

V.

That on the 25th day of April, 1913, for value received, said Thomas Winsor duly sold, assigned and set over all of his rights and claims against the defendant to this plaintiff who is now the owner thereof.

Wherefore, plaintiff prays judgment against the defendant in the full sum of \$10,000 with interest thereon at 6 per cent. per annum from the 23rd day of August, 1911, and for such other and further relief as to the court shall seem just and equitable.

EDGAR S. HADLEY,

Attorney for Plaintiff.

State of Washington, County of King, ss.

The undersigned, being first duly sworn on oath, says: I am the plaintiff named in the foregoing complaint; that I have heard the same read, know the contents thereof and believe the same to be true.

THOMAS M. SHIELDS.



Subscribed and sworn to before me this 20th day of September, 1913.

(Seal.)

EDGAR S. HADLEY,

Notary Public in and for the State of Washington, residing at Seattle.

**EXHIBIT "A."**

Seattle, Washington, August 23, 1911.

Union Trust Company, Chicago, Illinois:

Gentlemen: The undersigned Columbia River Lumber Company, a corporation, F. P. Kellogg, Thomas Winsor and R. H. Steeves have agreed as is below stated, and direct you to make certain payments and disposition, as is embodied in this instrument, upon behalf of all the parties concerned.

Reference is hereby made to an agreement dated August 23, 1911, between the Columbia River Lumber Company and F. P. Kellogg wherein the Columbia River Lumber Company have, upon the terms in said agreement mentioned, agreed to sell to F. P. Kellogg certain properties located in Chelan County, Washington, for the agreed price of \$225,000; also a certain escrow agreement dated August 23rd, 1911, directed to you as the escrow agent, providing for the payment by Kellogg, or his assigns, a corporation to be organized as is provided in the agreement above mentioned, to you as escrow agent for the benefit of the Columbia River Lumber Company \$225,000, the purchase price of said properties. Reference is made to the above two agreements the same as if the terms of said agreements were here set out in full.

Now, therefore, in consideration of the services rendered by Thomas Winsor and R. H. Steeves in negotiating and effecting a sale of said property, the Columbia River Lumber Company have agreed in event of said Kellogg's carrying out completely the said proposed sale to pay as a commission for perfecting said sale the sum of \$15,000 in manner and form: Now you are hereby requested and directed that when the certificate of stock mentioned in said agreements are delivered to you by F. P. Kellogg, or his assigns, for the benefit of the Columbia River Lumber Company, to set over and hold for the benefit of Thomas Winsor \$10,000 worth of said certificates, and for the benefit of R. H. Steeves \$5,000 worth of said certificates, and when the cash shall be paid to redeem said certificates and the interest thereon, you are hereby further directed to pay to Thomas Winsor of Seattle, Washington, the sum of \$10,000 plus the interest at 6 per cent. accrued thereon, and further to pay to R. H. Steeves \$5000 together with the interest accrued thereon at 6 per cent.; said amounts to cover all the claim or claims of the said Thomas Winsor and R. H. Steeves against any of the parties to said transaction on account of commissions for the negotiating and completing of sale of said property, the same to be deducted as hereinabove stated from the amounts to be turned over by you to the Columbia River Lumber Company, and the amount of the escrow agreement entered into between F. P. Kellogg and the Columbia River Lumber Company is varied to the amount of \$15,000.

COLUMBIA RIVER LUMBER COMPANY,

By GEORGE H. SELOVER,

(Corporate Seal.)

Its President.

By GEORGE B. DARLING,

Its Secretary.

F. P. KELLOGG.

THOMAS WINSOR.

R. H. STEEVES.

Service of the within Amended Complaint by delivery of a copy to the undersigned is hereby acknowledged this 27th day of September, 1913.

ARTHUR W. SELOVER and

E. M. FARMER,

Attorneys for Defendant.

Indorsed: Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 2, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,

*Plaintiff,*

*vs.*

COLUMBIA RIVER LUMBER COM-  
PANY, a Corporation,

*Defendant.*

No. 2527

**ANSWER.**

Comes now the above named defendant and in answer to the amended complaint of the plaintiff, states and alleges as follows, to-wit:

## I.

The defendant admits the allegations contained in Paragraph I of said amended complaint.

## II.

The defendant admits that on and prior to the 23d day of August, 1911, the defendant was the owner of certain timber and timber lands situated in Chelan County, in the State of Washington, and admits that it was desirous of selling said property. That defendant denies that in order to negotiate the sale of said property that the defendant employed one Thomas Winsor to act as its agent and denies that it employed Thomas Winsor to act as its agent in any capacity.

## III.

Defendant denies that Thomas Winsor, acting under its said employment or at all, in writing or at all, negotiated the sale of said property for and on behalf of said defendant to one F. P. Kellogg, or to any person whatsoever, and denies that the defendant entered into an agreement in writing or at all with said Thomas Winsor for the delivery to the Union Trust Company, of Chicago, Illinois, for said Thomas Winsor in consideration of his services 10,000 shares of stock of any corporation to be organized by said F. P. Kellogg or any other person. Defendant denies that the copy of an agreement attached to the amended complaint and marked Exhibit "A" was ever delivered to Thomas Winsor or any person for said Thomas Winsor, and denies that there ever was any consummation of an agreement between said defendant and said Thomas Winsor, as set forth in Exhibit "A".

## IV.

Defendant denies each, every and all of the allegations contained in Paragraph IV of said amended complaint. Defendant denies that the things set forth in Paragraph IV of said amended complaint were had and done in pursuance of said agreement marked Exhibit "A". Defendant admits that it has failed and refused to deliver to said Union Trust Company of Chicago, Illinois, or to said Thomas Winsor or to anyone acting in his behalf, 10,000 shares of the capital stock of said F. P. Kellogg Lumber Company, but denies that it has failed and refused to make said delivery by reason of said agreement marked Exhibit "A" or in pursuance thereof. Defendant denies that it has obtained from said F. P. Kellogg or the F. P. Kellogg Lumber Company, all of the capital stock of said F. P. Kellogg Lumber Company, including the 10,000 shares of stock to be held for the benefit of Thomas Winsor, and defendant denies that it has wrongfully converted said shares of stock or any shares of stock to the sum of \$10,000.00 to its own use and benefit belonging to Thomas Winsor or to anyone for him or claiming under him. Defendant admits that it now does and always has maintained and asserted that neither said Thomas Winsor nor this plaintiff claiming under him is entitled to any compensation whatsoever from this defendant for and on account of services rendered by said Thomas Winsor in behalf of said defendant, and defendant denies that said stock has become wholly lost to plaintiff and that plaintiff has been damaged to the sum of \$10,000 or any sum whatsoever.

## V.

Defendant denies each, every and all allegations contained in Paragraph V of the amended complaint.

Further answering said amended complaint and as and for an affirmative defense thereto, defendant alleges as follows:

## I.

Defendant alleges that on or about August 23, 1911, certain tentative agreements mentioned in "Exhibit A" attached to said amended complaint regarding the sale and disposition of the property herein mentioned to F. P. Kellogg were drawn up and executed. That prior to the delivery of any of said agreements or Exhibit "A", as set forth in the amended complaint, the said F. P. Kellogg absolutely refused, failed and neglected to carry out his part of said agreements and notified the said defendant company that he was unable and unwilling to carry out said agreements. Thereupon all negotiations between the parties therein mentioned ceased, and it was mutually agreed and understood by all parties thereto that all of said agreements and writings in reference thereto were null and void, and should be considered cancelled and null and void from then henceforth.

## II.

That the above named plaintiff was at all times familiar with the negotiations and transactions had between the said F. P. Kellogg and the defendant corporation, and the said Thomas Winsor, and was well informed of the cancellation of all of said agreements and writings.

Wherefore, defendant prays that the plaintiff take



nothing by this action and that the defendant have and recover a judgment against the plaintiff for its costs and disbursements herein.

ARTHUR W. SELOVER,

E. M. FARMER,

Attorneys for Defendant.

State of Washington, County of King, ss.

The undersigned, being first duly sworn, on oath says: I am one of the attorneys for the defendant named in the foregoing answer; that I have heard the same read, know the contents thereof and believe the same to be true. That the reason that I verify this answer instead of one of the officers of said corporation is that none of the officers of said corporation are at present within the State of Washington and within the jurisdiction of the United States District Court, Western District of Washington, Northern Division.

E. M. FARMER.

Subscribed and sworn to before me this 2d day of October, 1913.

(Seal.)

WM. M. THOMASSON,

Notary Public in and for the State of Washington, residing at Seattle, Wash.

Service of the within Answer by delivery of a true copy to the undersigned is hereby admitted this 2d day of October, 1913.

EDGAR S. HADLEY,

Attorney for Plaintiff.

Indorsed: Answer: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 4, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the United States District Court, Western District of  
Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
	<i>Plaintiff,</i>
	<i>Defendant.</i>

**REPLY.**

Comes now the plaintiff and by way of reply to the affirmative answer of the defendant alleges as follows, to-wit:

I.

He denies that part of Paragraph I of said affirmative defense which alleges that the agreement set forth in plaintiff's complaint, and marked Exhibit A, was a tentative agreement and denies that said agreement was any other agreement than is set forth in plaintiff's complaint, and denies each and every other allegation in said paragraph contained, and the whole thereof.

II.

He denies each and every allegation and thing set forth in Paragraph II of plaintiff's affirmative defense, and the whole thereof.

EDGAR S. HADLEY,

Attorney for Plaintiff.

State of Washington, County of King, ss.

The undersigned, being first duly sworn, says: I am the Pltff. named in the foregoing Reply; that I have heard



the same read, know the contents thereof and believe the same to be true.

THOMAS M. SHIELDS.

Subscribed and sworn to before me this 1st day of Nov., 1913.

EDGAR S. HADLEY,

Notary Public in and for the State of Washington, residing at Seattle.

Indorsed: Reply. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 2, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,

*vs.*

COLUMBIA RIVER LUMBER COMPANY, a Corporation,

F. P. KELLOGG,

*Plaintiff,*

*Defendant,*

*Intervenor.*

No. 2527

### STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto that the intervenor, F. P. Kellogg, may dismiss his complaint in intervention without prejudice and without costs.

EDGAR S. HADLEY,  
Attorney for Plaintiff.

GEO. D. EMERY,  
Attorney for Defendant.

J. Y. C. KELLOGG,  
Attorney for Intervenor.

Indorsed: Stipulation. Filed in the U. S. District Court, Western District of Washington, Northern Division, July 21, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,	) <i>Plaintiff.</i> ) No. 2527 ) <i>Defendant.</i> ) <i>Intervenor.</i>
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
F. P. KELLOGG,	

### ORDER OF DISMISSAL.

This cause coming on for hearing this — day of July, 1914, and it appearing to the Court that all of the parties hereto have stipulated that the intervenor, F. P. Kellogg, may dismiss his complaint in intervention without prejudice and without costs, and that said intervenor has moved the court for such dismissal; it is hereby ordered and decreed that the complaint in intervention of said F. P. Kellogg be, and the same hereby is dismissed without prejudice and without costs.

Done in open Court this 21st day of July, 1914.

JEREMIAH NETERER, Judge.

Indorsed: Order of Dismissal: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 21, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527	
<i>vs.</i>		
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,		
	<i>Plaintiff.</i>	
	<i>Defendant.</i>	

### TRIAL.

Now on this day this cause comes on regularly for hearing in open Court, Edgar S. Hadley and Will H. Thompson appearing for the Plaintiff, and Geo. D. Emery appearing for the Defendant, whereupon a jury being called come and answer to their names as follows: George Pursey, A. J. Snyder, August Nylin, E. C. Moore, R. C. Erskine, A. G. Keene, C. V. Beardslee, E. R. Engstrom, John W. Holway, Robert McGough, G. A. Voris and J. B. Seavy, twelve good and lawful men duly empaneled and sworn, the cause proceeds by plaintiff making opening statement to jury and examination of the following witnesses: Chas. A. Murray, Thomas Winsor, C. R. Aldrich, F. P. Kellogg and Thomas Winsor recalled, and the introduction of the following exhibits: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22. And now the hour of adjournment having arrived, by consent of parties, it is ordered by the Court that this cause be and is hereby continued until ten o'clock tomorrow morning, and the Court having cautioned the jury in this case they are allowed to separate until that hour. Dated July 21, 1914. Journal 4, Page 152.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527	
<i>vs.</i>		
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,		
	<i>Plaintiff.</i>	
	<i>Defendant.</i>	

**TRIAL.**

Now on this day this cause coming on, Edgar S. Hadley and Will H. Thompson appearing for the Plaintiff and Geo. D. Emery appearing for the Defendant, the jury being called, all being present in their box, the cause proceeds by plaintiff resting its case and defendant moves for non-suit. Motion is argued by respective counsel, and the Court being sufficiently advised grants said motion and the jury is excused from further consideration of the cause. Plaintiff excepts to ruling of Court and exception is noted. Dated July 22, 1914.

Journal 4, Page 153.

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*United States District Court, Western District of Wash-  
ington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527	
<i>vs.</i>		
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,		
	<i>Plaintiff,</i>	
	<i>Defendant.</i>	
F. P. KELLOGG,	<i>Intervenor.</i>	

**ON MOTION FOR NON-SUIT GRANTED.**

EDGAR S. HADLEY, for Plaintiff.

GEORGE D. EMERY, for Defendant.

J. Y. C. KELLOGG, for Intervenor.

NETERER, District Judge—Orally:

The plaintiff's right of recovery in this case must be predicated upon the agreement which bears date August 23, 1911. This agreement makes another memoranda of even date, executed between the defendant company in this case and F. P. Kellogg, a part of it by reference thereto. I think the recitals in the agreement in which the plaintiff in this case, or his assignor, Mr. Thomas Winsor, was a party, would take the case out of the statute of frauds as defined by the legislature of Washington, where it is provided in substance that contracts for the sale of real estate or any agreement, contract or promise with reference thereto shall be void unless such agreement, contract or promise, or some note or memoranda thereof, be in writing, or signed by the party to be charged or by some person thereunto lawfully authorized. That is to say, it refers to paragraph five of the section of the act where it provides that an agreement authorizing an agent or broker to sell or purchase real estate upon compensation or commission, and then provides what shall be set out in the authorization before it can support an action for a commission. This contract presupposes a consummated arrangement, and that all of the acts defined there have been, so far as the testimony is concerned, carried out, and the contract is really an executed one, and the stock set out in this agreement has been issued and is held by the defendant pursuant to an arrangement between the parties, and that this stock has been converted to the use of the defendant. The memoranda entered into between Kellogg and the defendant

company recites what shall be done in the organization of the corporation which was contemplated, and likewise provides for the payment to the defendant of the consideration for the lands in issue. It provides for compensations that were to be paid to Mr. Kellogg for his work in the operation and management of the concern that was to be organized and which was to handle the output from the lands of the defendant company until it became the property of Mr. Kellogg. The testimony shows that Mr. Kellogg did not pay anything himself for this property. It shows further that the terms and conditions of that agreement were not carried out. They were abandoned and a new plan was adopted by the parties afterwards. I don't think that would be material in this case, in view of the fact that the plaintiff in this case got the parties together, and if the plan which was adopted in this case was substantially the same as the original plan, the plaintiff in this case would be entitled to his compensation, if he was the agency which brought the parties together, and if the parties carried out the agreement which was entered into as understood by the parties.

Now, when I read this memoranda that was signed by all of these parties, there is one thing that immediately challenges my attention, and that is that in this type-written contract there was something that was originally omitted from the memoranda which was before the minds of the parties at the time it was made, and it was a matter which was considered very material at the time, and that is the insertion after the word "agreed," following the words, "The Columbia River Lumber Company has



agreed," which insertion is as follows: "In the event of said Kellogg's carrying out completely the said proposed sale," and then the writing as originally made concludes, "To pay as a commission for perfecting said sale the sum of \$15,000." Then follows another insertion, "In manner and form following," and then follows the way and manner in which this shall be paid, and provides for the deposit of the stock of the company in the Union Trust Company to be held for the benefit of Winsor, and likewise for the benefit of R. H. Steeves—\$10,000 for Winsor and \$5,000 for Steeves. This stock was not to be paid to these parties. If it had been considered that they were entitled to anything at that time the stock would have been delivered to the parties instead of putting it in the Union Trust Company. But there was still something to follow and what was to follow was simply what was interlined there, the carrying out of the proposed sale by the payment of the money and then the Union Trust Company was authorized to pay to these parties, not the stock, but the money, when it was paid by Kellogg. Now, then, in the memoranda that was made by Winsor on May 7, 1912, he says that he is willing that the Columbia River Lumber Company shall hold the stock instead of the Union Trust Company, and therefore, as the testimony shows here, I concluded that the Columbia River Lumber Company has this stock and is still holding it. Mr. Kellogg has stated that he hasn't paid anything; that he has abandoned the property; that he was short of funds and needed more funds and the parties have declined to advance him more funds, and that then it was concluded that he better

surrender all of the property, which he did, and did not receive a cent for it; never paid a cent in, and never got a cent out, other than his compensation. Much emphasis has been placed upon the fact that this company was called the Kellogg Company and that the transfer of the land to that company now is carrying out the original plan. Now the testimony here does not appear to me to bear out that construction. The only fact that could possibly suggest such a conclusion is the fact that it is now the Kellogg Lumber Company. It would be immaterial whether this company was the Kellogg Lumber Company or another lumber company. The right of the plaintiff would not be any greater than if it was called the Thompson Lumber Company, because the defendant company owns all of the stock. It even owns the one share which was given to Mr. Kellogg to qualify him to act as the trustee. He says that the stock was issued to him and he endorsed it and delivered it back to the company. Now, I could not instruct the jury on any proposition of law known to me which would authorize a recovery in this case. It would simply be authorizing the plaintiff to recover in this case because the defendant organized, or permitted the organization of a company to hold these properties and for employing Mr. Kellogg to manage and operate the concern and pay him for it, and giving him the opportunity of buying the preferred stock of the concern, and that would be all. The defendant company still owns all of the property just the same as it did before, except that it has it in another form or name. I do not think from the evidence in this case that the plaintiff



is entitled to recover. I appreciate that the plaintiff has done much service, but the court cannot make contracts. The contract here is definite and clear, and while there might have been some doubt as to its meaning, the direct expression is inserted by pen, which provides when these matters shall be paid and that they shall be paid only upon the completion of the carrying out of the plan or arrangement. I think the motion must be granted. You may call in the jury.

I might add that I think the Bishop case, in 17 Washington, is clearly distinguishable from the facts in this case. There the parties made a sale, and the buyer paid a part of the consideration himself and entered into the operation of the property and made payments from the output of the mine, and afterwards the parties agreed upon another disposition for a valuable consideration which was satisfactory to both wherein the money was paid and passed between the parties themselves rather than through the bank, and the court rightly held in that case that the parties could not, in that sort of fashion, defeat the party from receiving consideration for services rendered. But this case is different in that the defendants here always had and still have all of the property, but only in another form.

*Instructions to Jury.*

You, gentlemen of the jury, are instructed that the defendant having moved for non-suit in this case, and it appearing that there is not sufficient evidence upon which to predicate a verdict, the court has granted the motion. There is no evidence in this case, as I construe the law,

which could support a verdict, and you are therefore excused from further consideration in this case, and until ten o'clock to-morrow morning.

To which the plaintiff excepts and the exception is noted.

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 23, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,	$\left. \begin{array}{l} \textit{Plaintiff.} \\ \\ \\ \textit{Defendant.} \end{array} \right\}$
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM-	
PANY, a Corporation,	
	No. 2527

### **MOTION FOR NEW TRIAL.**

Comes now the plaintiff and moves the court to grant and allow a new trial in the above entitled action upon the following grounds and for the following reasons:

#### **I.**

That the Court erred in granting the motion of the defendant for a non-suit and in refusing to submit the evidence offered by the plaintiff to substantiate his cause of action to the jury.

WILL H. THOMPSON,  
EDGAR S. HADLEY,  
Attorneys for Plaintiff.

Service of the within Motion for New Trial by delivery of a copy to the undersigned is hereby acknowledged this 23d day of July, 1914.

GEO. D. EMERY,

Attorney for Deft.

Indorsed: Motion for New Trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 23, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the United States District Court for the Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,

*Plaintiff.*

*vs.*

COLUMBIA RIVER LUMBER COMPANY, a Corporation,

*Defendant.*

No. 2527

### ORDER DENYING NEW TRIAL.

This cause came duly before the Court on July 23rd, 1914, on motion of plaintiff for a new trial thereof, on the grounds set forth in the motion on file herein.

Edgar S. Hadley and Will H. Thompson, Esqs., appeared for the plaintiff, and Geo. D. Emery, Esq., for the defendant.

After hearing counsel and considering said motion it is Ordered:

That said motion be and the same is in all things denied.

The plaintiff duly excepted hereto.

Dated July 23rd, 1914.

By the Court:

JEREMIAH NETERER, Judge.

Indorsed: Order Denying New Trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 23, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

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*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
	<i>Plaintiff,</i>
	<i>Defendant.</i>

### JUDGMENT.

The above entitled cause having been duly tried on July 21st and 22d, 1914, before the court and a jury, and the said court having upon the motion of the defendant at the close of plaintiff's case, ordered and directed that judgment of non-suit be entered therein against the said plaintiff, at its cost:

Now, therefore, on motion of George D. Emery, attorney for the defendant, and pursuant to the said order of court on file herein,

It is by the Court considered and adjudged that the said cause be and the same is hereby dismissed for want of sufficient proof of facts to constitute a cause of action.

It is considered and adjudged further that the defendant have and recover of and from the plaintiff its costs and disbursements to be taxed and inserted herein.

By the Court.

Dated this 23d day of July, A. D. 1914.

JEREMIAH NETERER, Judge.

O. K. as to form: EDGAR S. HADLEY.

Indorsed: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 23, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western  
Division of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>Plaintiff,</i>	
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
<i>Defendant.</i>	

### STIPULATION.

It is hereby stipulated by and between the attorneys for the plaintiff and the attorneys for the defendant in the above entitled action, that the plaintiff shall have until and including the 31st day of August, 1914, to prepare, serve and file a bill of exceptions in the above entitled cause.

WILL H. THOMPSON,  
EDGAR S. HADLEY,  
Attorneys for Plaintiff.

GEO. D. EMERY,  
Attorney for Defendant.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Aug. 8, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>Plaintiff.</i>	
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
<i>Defendant.</i>	

**ORDER.**

It being shown to the Court that the parties to the above entitled cause, by their attorneys, have stipulated that the plaintiff may have until and including the 31st day of August, 1914, within which to prepare, serve and file a bill of exceptions in said cause; and it appearing to the court that it is right and proper that the time for so preparing, serving and filing said bill of exceptions should be extended until and including said 31st day of August, 1914:

It is hereby ordered by the Court that the time within which the plaintiff may prepare, serve and file his bill of exceptions shall be and it is hereby extended until and including said 31st day of August, 1914.

Done in open Court this 8th day of August, 1914.

EDWARD E. CUSHMAN, Judge.

Form O. K.: G. D. A.

Indorsed: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Aug. 8, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>Plaintiff,</i>	
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	} Defendant.

### STIPULATION.

It is hereby stipulated by and between the attorneys for the plaintiff and the attorneys for the defendant in the above entitled action, that the plaintiff shall have until and including the 15th day of September, 1914, to prepare, serve and file a bill of exceptions in the above entitled cause.

EDGAR S. HADLEY,  
WILL H. THOMPSON,  
Attorneys for Plaintiff.  
G. D. EMERY,  
Attorney for Defendant.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Aug. 31, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>Plaintiff,</i>	
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	} Defendant.

### ORDER.

It being shown to the court that the parties to the



above entitled cause, by their attorneys, have stipulated that the plaintiff may have until and including the 15th day of September, 1914, within which to prepare, serve and file a bill of exceptions in said cause; and it appearing to the court that it is right and proper that the time for so preparing, serving and filing said bill of exceptions should be extended until and including said 15th day of September, 1914:

It is hereby ordered by the Court that the time within which the plaintiff may prepare, serve and file his bill of exceptions shall be and it is hereby extended until and including the 15th day of September, 1914 .

Done in open Court this 31st day of August, 1914.

JEREMIAH NETERER, Judge.

O. K.: G. D. EMERY, Defts. Atty.

Indorsed: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Aug. 31, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.



*In the United States District Court for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	<i>Plaintiff,</i>	} No. 2527
<i>vs.</i>		
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	<i>Defendant.</i>	
F. P. KELLOGG,	<i>Intervenor.</i>	

BE IT REMEMBERED, that heretofore and on, to-wit, Tuesday, July 21st, 1914, the above entitled cause came regularly on for trial in the above Court, and before The Honorable JEREMIAH NETERER, Judge of said Court sitting with a jury.

The plaintiff appearing by MESSRS. EDGAR S. HADLEY and WILL H. THOMPSON, his attorneys and counsel.

The defendant appearing by GEORGE D. EMERY, Esq., and A. W. SELOVER, its attorneys and counsel.

The intervenor appearing by J. Y. C. KELLOGG, Esq., his attorney and counsel.

AND, THEREUPON, the following proceedings were had and done, to-wit:

MR. KELLOGG: In the case, if your honor please, of Shields versus the Columbia River Lumber Company, the parties have stipulated that the complaint in intervention may be dismissed and I will present the order for your honor to sign.

THE COURT: The action on the part of Mr. Kellogg is dismissed.

Are the parties ready to proceed?

MR. EMERY: Defendant is ready.

THE COURT: Call a jury.

(A jury having been duly empaneled and sworn to try the cause, the following proceedings were had and done, to-wit:)

MR. HADLEY: Gentlemen of the Jury—We propose to show by the evidence to you in the trial of this case that back in 1910, and prior to that time, and during 1911, the defendant in this action, the Columbia River Lumber Company, was a Minnesota corporation, and whose stockholders, principally, if not all, were Minnesota men, owned in Chelan county a body of land. Some estimate it at some 38,000 acres of timber land, and some 11,000 acres of agricultural or fruit land. Mr. Charley Murray, of Tacoma, was agent in this state, it being a foreign corporation, they designated Mr. Murray as agent, and they desired to sell that property, so in 1910 Mr. Murray took the matter up with Mr. Winsor, and Mr. Winsor started in and attempted to sell that property. Mr. Winsor, in the course of his efforts, met F. P. Kellogg, and Mr. Kellogg became interested in the property with a view of purchasing it. It seems then there was no one in authority in the corporation to sell the property and they elected a selling committee who represented the stockholders and who represented the corporation. The matter progressed, and Mr. Winsor presented Mr. Kellogg to this selling committee, or some members of it, and Mr. Winsor had, prior to, or about that time, been authorized by the members of the selling

committee, as the agent for the corporation, to negotiate the sale of this property, and represent them as such. Mr. Kellogg then entered into apparently—

MR. EMERY—Pardon me. I wish to object to counsel's statements for this reason: The complaint in this action is for the conversion of certain stock, which, it is charged, was agreed to be delivered at a certain time to the Union Trust Company, and the defendant is charged with having wrongfully converted to its own use this stock. Now, the question as to whether Mr. Murray was the company's agent or whether Mr. Winsor was employed to sell the property, or whether he was entitled to any real estate commission, all matters outside of that agreement are wholly immaterial and counsel should not be permitted to state them; he should be confined to the written statement, and that alone, and the prior transactions leading up to it are all immaterial.

THE COURT: Objection overruled.

Note an exception.

MR. HADLEY: Rather, a tentative agreement or letter addressed by Mr. Kellogg to members of the selling committee was addressed on June 29th, 1911, and this transaction was entered into in a way. Later, on the 23rd day of August, a more full, and rather different in its terms, agreement was entered into by the Columbia River Lumber Company and F. P. Kellogg whereby they agreed to the organization of a corporation by Mr. Kellogg to take over this property and then to put a bond issue upon the property. At that time they entered into

a writing, and the Union Trust Company was designated as the Trust Company to hold the bonds and the stock, and agreed that this Company should hold for Thomas Winsor ten thousand shares for F. P. Kellogg, of the company which was to be organized. I think we will show then, gentlemen, that later, without having anything to do with Mr. Winsor or saying anything to him, they entered into a different agreement in the matter with Mr. Kellogg. However, the stock was kept by the Columbia River Lumber Company, and Mr. Kellogg went into the operation of the bond issue, and he continued in the operation of that property, and built mills and went ahead with the operation of it with the idea of carrying out the agreement. Later, Mr. Winsor desired to have his stock delivered to him, and the Company refused to do it, and then claimed that they owed him nothing for his services, and that brought about this action. They kept and held the stock and do to this day claim that he has no interest in it; and another matter we will show and which I want you to bear in mind, the sale of this property to Mr. Kellogg. The Columbia River Lumber Company only held their property at \$205,000, and Mr. Kellogg took the property over at \$225,000. \$20,000 was to go to the persons who negotiated the sale of the property for the Company. Now, that left \$10,000 for Mr. Winsor, \$5,000 for Mr. Murray, and \$5,000 for R. H. Steeves, which is shown by the agreement. A company was organized and stock was issued back to cover the \$225,000, purchase price. They were paid in this transaction, \$80,000 cash which came out of the bond

issue. There was left, \$145,000 in preferred stock. There was the \$80,000 and \$145,000 which makes \$225,000 the purchase price. \$10,000 of that stock we claim, and it is fair to presume, and is a fact, was the stock of Thomas Winsor, \$5,000 was the stock of Mr. Murray, and \$5,000 the stock of Mr. Steeves. They are still holding the stock of that company, which refuses to surrender it, and claim they owe us nothing. I will say, Mr. Winsor, prior to the commencement of this action, transferred his claim in this stock to Mr. Shields.

MR. EMERY: I think we will reserve our statement, your honor.

THE COURT: All right. Call your witness.

MR. EMERY: If I understand counsel correctly, he does not wish to recover upon a quantum meruit but under the contract he recites. If I am not correct, I wish counsel to elect which he will stand upon and you should be required to elect whether you desire to recover on a contract of quantum meruit or whether you stand upon the recovery of damages for alleged conversion of the stock. Your complaint says one thing and your statement, as I understand it, is something else.

MR. HADLEY: The transaction grows out of this written agreement between the parties.

THE COURT: In looking at the amended complaint—

MR. EMERY: The original complaint was on a contract for commission. The amended complaint was for recovery of damages for conversion.



THE COURT: What do you say, Mr. Hadley, to Judge Emery's request?

MR. HADLEY: I say we are seeking to recover damages growing out of this contract, so recovery must come out of the dealings with this corporation and growing out of this contract and its dealings with F. P. Kellogg, and the F. P. Kellogg Lumber Company. We are, of course, suing for conversion of the stock, which, as we contend, was our stock and should have been delivered to us. The stock represents the compensation that has been earned, left in their hands, and this action is brought by reason of their refusal to surrender it.

THE COURT: Is there any estimate as to the value of this stock?

MR. EMERY: None whatever.

THE COURT—According to the contract, you are entitled to ten thousand shares.

MR. HADLEY: Which is of the par value of \$10,000.

MR. EMERY: My point is, if they elect to stand upon a conversion of the stock, they cannot recover on a contract for commission. If they recover it will be because we have converted something which belongs to them to their damage.

MR. THOMPSON: Your honor, it is provided by the contract that Mr. Kellogg, or F. P. Kellogg Lumber Company, is to have a right to have that stock placed in escrow. That that stock was to remain there for a period of five years, in which Mr. Kellogg should pay for and take up that stock dollar for dollar, \$10,000. Now, it is

alleged in the complaint, the defendant, Columbia River Lumber Company, made a deal in the absence of Mr. Winsor which prevented Mr. Kellogg, so far as Mr. Winsor is concerned, from paying for that stock, and kept it themselves.

THE COURT: Proceed:

**CHARLES A. MURRAY**, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

*Direct Examination.*

BY MR. HADLEY:

Q. State your name, please?

A. Charles A. Murray.

Q. You reside in Tacoma, Mr. Murray?

A. Yes, sir.

Q. Mr. Murray, what, if any, connection back in the years 1910 and 1911 did you have with the Columbia River Lumber Company?

A. I was the statutory agent of the Columbia River Lumber Company and did business for them in the state. I was authorized to sell the holdings of the Columbia River Lumber Company.

MR. EMERY—I think such authority as that should be in writing. I object to the witness' statement that he had that authority, unless he produces the writing.

Q. Mr. Murray, what was the nature of the authority that you had from the Columbia River Lumber Company?

A. I had a letter from Mr. Selover authorizing me—

MR. EMERY: I object to counsel's statement as



to the contents of the letter. He is a lawyer and knows better.

THE COURT: The letter speaks for itself.

A. I am unable to find that letter.

Q. Have you searched for it?

A. Yes, I have. I testified in a case last Spring in this connection and it may have been used there. I am unable to state.

Q. You do not know where it can be found?

A. It is not in its place in the file.

MR. EMERY: Let me cross examine a moment, your honor, before the contents of the letter is stated.

THE COURT: Proceed.

BY MR. HADLEY:

Q. Who was Mr. Selover that you mentioned?

A. He was one of the Columbia River Lumber Company.

Q. What position with the corporation did he hold or occupy?

A. I think Mr. Selover was secretary at that time.

Q. Secretary of the Columbia River Lumber Company?

A. Secretary of the Columbia River Lumber Company.

Q. Now, you stated, Mr. Murray, that you received from Mr. Selover a letter which had something to do with the sale—looking to the sale of this property, that you could not find?

A. Yes, sir.

Q. Will you state, if you can, the contents of that letter?

MR. EMERY: Now, may I cross-examine the witness a moment?

BY MR. EMERY:

Q. Mr. Murray, you say you could not find that in the file; you also said you testified concerning this matter in a case last Spring? Was the letter used in that case?

A. I am unable to state. The only thing that occurs to me to account for the absence of the letter from the files is that it may have been used then.

Q. And have you examined the file to see if it was there?

A. Yes, sir.

Q. The exhibits in that case?

A. No, sir; I did not.

Q. It may be there for aught you know?

A. Yes, sir.

Q. Where was that case tried?

A. In the Superior Court of this county.

Q. Have you endeavored to obtain a copy of the letter? Have you asked the Company for a copy of the letter?

A. I have not.

MR. EMERY: I object to the witness stating the contents of it. All sources of where the letter is have not been exhausted. If the paper could not be produced, we should have been called upon for a copy.

THE COURT: Objection overruled.

MR. EMERY: Note an exception.

THE COURT: I think during the recess the files of the Superior Court should be examined.

MR. HADLEY: I will do that.

MR. EMERY: I object to the question as being incompetent.

THE COURT: Objection overruled.

MR. EMERY: Note an exception.

A. You ask me to state the contents of the letter. I cannot undertake to do that any more particularly than to say that in some letter I was authorized to—

MR. EMERY: Now, that particular letter is the one referred to, and I object to counsel referring to some other letter.

THE COURT: Yes.

A. (Witness continuing)—the substance of the letter so far as the sale was concerned was that I was authorized to sell the land for \$200,000 and receive a commission of five per cent.

BY MR. HADLEY:

Q. What lands were those, Mr. Murray?

A. They were the land—

MR. EMERY: This is important, and I think the witness should state the contents of the letter substantially as he recalls them.

THE COURT: Yes, confine yourself to the matters contained in the letter.

Q. State, Mr. Murray, as near as you can, what was contained in the letter about the land that would indicate what lands they were?

A. My recollection of the letter to which I referred that it was limited to a statement of the authority to sell, and the terms of sale on those lands about which we were having correspondence every few days. I had been representing the Company for years. They only had one body of land here and any reference to the land could only have reference to one particular body of land.

Q. What body of land was that?

MR. EMERY: That question is objected to, and I ask to strike out the answer of the witness as not responsive to the question. He has gone on and given his opinion of correspondence for years.

THE COURT: Objection overruled.

A. The land belonging to the Company in Chelan county, Washington.

Q. Do you know, Mr. Murray, about the extent of those lands?

A. There were approximately 50,000 acres.

Q. Did you ever see the land?

A. I have seen some of it.

Q. What was the character of it?

A. It was timber land, mostly.

Q. Do you have, in your possession, Mr. Murray, any correspondence between the Columbia River Lumber Company or any of its officers with regard to the sale of these lands?

A. I have some with Mr. Selover.

Q. Do you have them with you?

A. Yes, sir.

Q. I will ask you, Mr. Murray, to call attention to such communications you have there which refers to the disposition of these lands?

A. I have here copies of some letters I wrote to Mr. Selover, during the year 1911, and telegrams to me and telegrams from me, all bearing upon the subject of the sale of these lands.

Q. Those letters are letters from Mr. Selover and replies to Mr. Selover's letters from you?

A. Copies of my letters to Mr. Selover; some telegrams from him and a letter from him.

Q. What was the first letter or communication that you had?

MR. EMERY: Allow me to examine it?

MR. HADLEY: Yes.

MR. EMERY: I notice many of these letters are signed, "Tom," on the letterhead of Thomas Winsor. Those are not the letters you referred to?

THE WITNESS: I only referred to the letters I described between Mr. Selover and myself. I am not making any point about any letters from Mr. Winsor.

Q. Mr. Murray, you may state what, if anything you know, about the connection of Mr. Thomas Winsor with regard to the properties?

MR. EMERY: Well, I want to interpose the objection at this time that all of this testimony is immaterial under the amended complaint. They sue for damages on account of the conversion of the stock. If they establish that they must establish a contract to pay the commission.

THE COURT: Objection overruled.

A. I authorized Mr. Winsor to try to make a sale of the property.

MR. EMERY: If your honor please, I shall object to that statement, unless the authority is given in writing, specifying the property, and specifying the terms. I take it that they will show that was in writing, and, if in writing, that the writing be produced.

Q. Mr. Murray, what was the nature of the authority that you gave Mr. Winsor?

MR. EMERY: I object to that. The nature of it is revealed by the writing.

THE COURT: The objection is overruled. Proceed and see what was done. If there was a writing, we want to know it.

MR. EMERY: Does your honor recall the statute of frauds?

THE COURT: Oh, yes.

MR. EMERY: And your Supreme Court decisions?

THE COURT: Oh, yes. I might engage you to sell things for me, but before you can do anything, you must have it in writing from me.

(Whereupon the last preceding question was read to the witness by stenographer as follows:)

Q. Mr. Murray, what was the nature of the authority that you gave Mr. Winsor?

A. Whether oral or in writing, you mean?

Q. Yes.

A. I am sure it was oral.

Q. Now, state whether or not you base your authority for that upon the authority you had received and from the correspondence you had, some of which you had in your hand from Mr. Selover?

A. I did.

Q. Mr. Murray, I will ask you to refer to the letter which you have in your hand which refers to the matter of the sale of this property?

MR. EMERY: From Mr. Selover?

MR. HADLEY: Yes, from Mr. Selover.

A. You mean only about the sale that Mr. Winsor was connected with?

Q. I mean generally authorizing you to sell the property—to offer it for sale?

A. I have in my hand copy of a letter written by me to Mr. Selover on March 15th, 1911.

MR. EMERY: I think the copy then is the best evidence. We do not object to the copy being offered, but to the testimony of the witness.

THE COURT: Yes, the letter will speak for itself. The letter will be identified and then let it only speak for itself.

THE WITNESS: I was only proceeding to describe the letter.

THE COURT: Well, hand it to the clerk and have it identified. Give the date to the stenographer so he will get it in the record.

MR. HADLEY: If it is the same to you, Mr. Emery, we might fasten them all together.



THE WITNESS: It is the bottom one, Mr. Hadley.

MR. HADLEY: A letter to Mr. George H. Selover, dated March 15th, 1911.

MR. EMERY: They better be marked separately. We may want to refer to them.

THE COURT: Yes, take the figures.

MR. HADLEY: It is offered in evidence.

MR. EMERY: I shall object to it as being incompetent under the pleadings; not, however, that it is a copy.

THE COURT: Objection overruled.

MR. HADLEY: Telegram dated March 29th, 1911, addressed to Charles A. Murray, Tacoma, Washington, with the name George H. Selover on the bottom.

MR. EMERY: Same objection: incompetent and immaterial.

THE COURT: Same ruling.

Whereupon said telegram was marked plaintiff's exhibit No. 2 and admitted in evidence.

MR. HADLEY: Copy of a telegram from Charles A. Murray, Tacoma, Washington, to George H. Selover, at Minneapolis, Minnesota, dated March 31st, 1911.

MR. EMERY: Same objection.

THE COURT: Same ruling.

Whereupon said telegram was marked plaintiff's exhibit No. 3 and admitted in evidence.

MR. EMERY: Your honor, may I, without stopping to note an exception, may it be understood an exception is noted?

THE COURT: Oh, yes; an exception to each ruling of the court.

MR. HADLEY: Night letter of April 24, 1911, to George H. Selover, signed by Charles A. Murray.

MR. EMERY: Same objection.

THE COURT: Same ruling.

Whereupon said night letter was marked plaintiff's exhibit No. 4 and admitted in evidence.

MR. HADLEY: Day letter addressed from Minneapolis, April 25th, 1911, to Charles A. Murray, signed by George H. Selover.

MR. EMERY: Same objection.

THE COURT: Same ruling. Exception noted.

Whereupon said day letter was marked plaintiff's exhibit No. 5 and admitted in evidence.

MR. HADLEY: Copy of letter dated May 3rd, 1911, to George H. Selover.

MR. EMERY: Same objection. We do not object on the ground that it is a copy but that it is incompetent, irrelevant and immaterial.

THE COURT: Same ruling.

Whereupon said letter was marked plaintiff's exhibit No. 6 and admitted in evidence.

MR. HADLEY: Copy of a letter dated August 9th, 1911, to George H. Selover.

MR. EMERY: Same objection.

THE COURT: Let me see those letters. I do not know what they are.

(Counsel hands letters to Court.)

Whereupon said letter was marked plaintiff's exhibit No. 7 and admitted in evidence.

MR. HADLEY: Letter dated August 22nd, 1911, to George H. Selover, signed Charles A. Murray.

MR. EMERY: That is a carbon copy, isn't it, or is that a lead pencil copy?

MR. HADLEY: It looks like carbon.

MR. EMERY: Same objection to this letter as being incompetent and immaterial.

Whereupon said copy of letter was marked plaintiff's exhibit No. 8 and admitted in evidence.

MR. HADLEY: Night letter of August 28th, 1911, to George H. Selover.

MR. EMERY: Same objection.

Whereupon said night letter was marked plaintiff's exhibit No. 9 and admitted in evidence.

MR. HADLEY: Letter from George H. Selover, dated August 30th, 1911.

MR. EMERY: Same objection to this, that it is incompetent under the pleadings.

THE COURT: I understand all these objections go to the offers?

MR. EMERY: Yes, sir.

Whereupon said letter was marked plaintiff's exhibit No. 10 and admitted in evidence.

MR. HADLEY: It is understood that objection goes to all, and you need not make it each time.

September 4th, 1911, to George H. Selover, of Minneapolis, Minnesota, signed Charles A. Murray.

Whereupon said letter was marked plaintiff's exhibit No. 11 and admitted in evidence.

THE WITNESS: The original of that was signed by myself.

Q. Mr. Murray, are these all the letters and communications you have in regard to the transactions?

A. These are the only ones I could find bearing on the sale.

Q. And upon your authority as the agent?

A. Yes.

MR. HADLEY: I would like, if your honor please, to have those letters read.

THE COURT: Proceed.

MR. HADLEY: On account of the fact some of them are carbon copies, the witness can read them as well as I can, and perhaps better.

Read those letters so the jury can hear them. Take them in the order in which they are marked.

(Whereupon witness read copy of letter dated March 15th, 1911, and marked plaintiff's exhibit 1, as follows:)

"March 15th, 1911.

"Mr. George H. Selover, 923 Metropolitan Life Building,  
Minneapolis, Minnesota:

"Dear Mr. Selover: On my return, after a few days' absence about the 5th, I learned that the people who were examining the timber land had not been able to go over a large part of it on account of the depth of snow still existing there. The following are extracts from a letter from my friend who is trying to make this sale. He is a retired lumberman and is very sanguine that he will

be able to make a sale soon. 'I have furnished them with maps and complete data, except as to the measurement of the timber, as to the quantity of timber I have given them my opinion and reasons upon which it is based. They say if they find it as I have represented, they will positively buy. However, inasmuch as there is a fair prospect of selling to the parties who have made a partial examination, and own timber adjoining that, that I sold to them in January, 1910, it is not wise to tie it up a day longer than is necessary. There is a nasty obstacle in the way of selling this proposition. It is this: No one has the knowledge to state positively all the facts concerning it. When I made the sale of 30,000,000 feet adjoining it, I made it on a statement of fact. It took but ten days to check them up and close the sale. The owner of this property had been trying to sell for two years; he had placed it with many agents; finally he came to me. He paid my expenses to go and look at it. After seeing it, we made the following bargain: I agreed to sell it within a year. In addition to my commission I got \$500 for making a statement of facts concerning it. For this sum I cruised the timber and ascertained its scale, quality, average size and length, cost of logging, cost of logging railroad, the acreage of tillable and grazing land, etc., that an expert on lumbering propositions must set forth. It is worth \$1,000 to make a like report on this proposition, a report that I could close a deal upon, subject to checking up the facts, taking as the basis of sale. If I had such a report now, with my reputation in the lumbering business, I could go to New York and close with the

parties in question. I would take a chance and make this report if the owners will give me a reasonable time to sell the property at the net price to them now asked. I do not think it will take me three months to make the report and close the deal, however, I want to be reasonably protected if I go to this expense.'

"Yours very truly."

(Whereupon witness reads day letter dated at Minneapolis, Minnesota, March 29th, 1911, and marked plaintiff's exhibit 2, as follows:)

"Minneapolis, Minnesota, March 29, 1911.

"Charles A. Murray, Tax Department, Northern Pacific Railway, Tacoma, Washington:

"Company will give ninety days provided complete examination and report is made by your man at his expense and we will provide one man to help complete duplicate is all. Data obtained to be delivered to us as made. Answer.

GEORGE H. SELOVER."

(Whereupon witness reads night letter dated March 31st, 1911, and marked plaintiff's exhibit 3, as follows:)

"Tacoma, March 31, 1911.

"George H. Selover, Metropolitan Life Building, Minneapolis, Minn.:

"Winsor thinks can sell in ninety days but could not afford to risk so much on that contingency. He will undertake work if you will give us till January first next to make sale or pay him \$1,000 if you sell before that time through other agency. Report to be delivered you January first without compensation if land not sold at any



time sooner on payment of \$1,000. Prospective purchasers are examining land now.

“CHARLES A. MURRAY.”

(Whereupon witness reads night letter dated at Tacoma, April 24th, 1911, and marked Plaintiff's Exhibit 4, as follows:)

“Tacoma, April 24th, 1911.

“George H. Selover, 836 Metropolitan Life Building, Minneapolis, Minnesota:

“May I give exclusive option for 15 days for preliminary examination with provision for additional 90 days to complete cruise to be participated in by our representative on payment of \$25,000 to be forfeited if cruise shows 250,000,000 feet merchantable timber and sale not completed; if sale completed to apply on purchase price on terms given by you? CHARLES A. MURRAY.”

(Whereupon witness reads day letter dated at Minneapolis, Minnesota, April 25th, 1911, and marked Plaintiff's Exhibit 5, as follows:)

“Minneapolis, Minn., April 25, 1911.

“Mr. Charles A. Murray, care Tax Department, N. P. Ry. Co., Tacoma, Wn.:

“Answering yours 24th. Terms stated are satisfactory. Go ahead; if the ninety days' option is required it should be signed by us and I think the money should be deposited here. GEORGE H. SELOVER.”

(Whereupon witness reads copy of letter dated May 3rd, 1911, and marked Plaintiff's Exhibit 6, as follows):

“May 3, 1911.

“Mr. George H. Selover, 836 Metropolitan Life Building, Minneapolis, Minnesota:



"Dear Sir: I have a letter from Mr. Winsor written on the first inst., that he was leaving with two men sent by Lambert and Hoban, to decide preliminarily as to the land. If their report is favorable, they will be joined by Hoban who will be notified by wire so that he can deposit the \$2500 and remain until the cruise is completed. I signed the preliminary agreement on April 25th, giving twenty days for the preliminary examination and making the second period to expire 85 days after the 15th of May. They wanted this arrangement because it would take them several days to get ready to go over. I made the money payable at the Pacific National Bank at Tacoma instead of there because I did not think that would make serious difference to you and they wanted that arrangement so that it would not be necessary to lose any time at all if they decided to put up the money.

"I enclose herewith the agreement to be signed in the second instance if they decide to make the cruise, for your signature. If, after this, they go ahead with the contract, I will prepare and forward for your execution, a contract in accordance with these provisions. The contract, which I enclose, can, when executed, be sent to the bank with authority to deliver to Lambert and Hoban on payment of \$2500. I also enclose a copy for you to retain. If these people go ahead and make a purchase there will be \$68,695 to come to you in cash and \$121,305 will be payable in three equal annual payments with interest at six per cent in one, two and three years. The terms you gave me were \$200,000, less a five per cent commission, payable \$40,000 down, the balance on time at six

per cent. This will give you upwards of \$28,000 more of a cash payment than you require. The total acreage is 48,522, so that the total purchase price is \$242,610.

“The other parties who are interested in the commission want to have it apportioned through my hands so if the main contract is made, I will want you to send a letter to the Pacific National Bank direct, or to them in my care, the same being confidential and separate from the contract correspondence, directing them that upon the payment of the sum of \$121,305 on the purchase price, they may pay \$52,610 to me or my order.

“You will notice, on checking, that there have been omitted from the contract the descriptions in sections 7 and 19, township 24-21 and section 25-24-20. There is not anything like the acreage in these descriptions given in the old list, on account of error in the survey. There is none of section 19-24-21 and very little, if any, of section 25-24-20. However, what there is of these descriptions I wish to have you convey to me if this sale goes through.

“We have several other parties on the string if we fall down on this deal. The difficulty in selling this land is, as you know, on account of the quality of the timber rather than the quantity. Mr. Winsor, who is an old mill man, and has sold a lot of timber land on that side of the mountains, has developed a very excellent story which is impressive, about what can be done with this timber to realize on it, beyond what one, not familiar with conditions would expect, and he has a lot of different parties that are taking a real interest in the subject.

"You asked me in a recent note who Hoban is. He is a Portland timber man and that is all I know about him. Lambert is a banker. Winsor feels very confident that if the matter goes beyond the payment of the \$2500 that the sale will go through. Very truly yours."

MR. EMERY: I understand that counsel does not pretend that agreement was ever carried out, so what is the use of burdening the record with it?

THE COURT: What is the purpose of it?

MR. THOMPSON: It is a history of it. In the first place, Mr. Winsor came into it.

THE COURT: Does this lead up to the contract?

MR. EMERY: Not even the same parties.

MR. THOMPSON: Mr. Winsor was taken into it for the purpose of making a report on that timber. He proceeded to do that and then they did not sell to those particular parties. Then he used that scale, the scale made, in the next deal with Mr. Kellogg, and he was taken into that in the same way, but part of it was worked out during the first engagement.

THE COURT: What is the use of taking up the time of the Court with this ancient history? I understood it was directed to the contract.

MR. THOMPSON: I think if the court was as familiar with it as we are, your honor would see that Winsor's employment was step by step.

THE WITNESS: The next letter refers to the Kellogg transaction.

THE COURT: Let us see what it is.

(Whereupon witness reads copy of letter dated on August 9th, 1911, and marked plaintiff's exhibit 7, as follows:)

“August 9, 1911.

“Mr. George H. Selover, Metropolitan Life Building,  
Minneapolis, Minnesota :

“Dear Mr. Selover: Mr. F. P. Kellogg's attorney has sent to me a new form of agreement and escrow agreement, prepared pursuant to my disapproval of the original arrangement, which forms are satisfactory as far as they go, but in my judgment, even if the proposed arrangement should be made, omit provisions which should by all means be included. As he states, this is the very best that Mr. Kellogg will do, it does not seem worth while to discuss other necessary provisions. Mr. Kellogg makes much of placing his whole responsibility behind his contract but a large responsibility can be easily wiped out in this kind of an enterprise. My own views are if I were the party interested and were tempted to make such an arrangement I would only count that I was making the sale for \$80,000. I would count the prospect of getting more than that only a remote possibility.

“I am leaving this morning for about a week and am writing Mr. Collyer to let me know by the time of my return just how much assurance of providing a purchaser he can give. By that time I will have had time to hear from you again as to whether you decide to go through with this arrangement. Mr. Kellogg's attorney has asked me to return the papers which he sent to me

so I presume he is sending the originals direct to Minneapolis. Very truly yours."

MR. EMERY: I think that is open to the same criticism; nothing signed by the Company and nothing to bind anybody.

(Whereupon witness reads copy of letter dated August 22nd, 1911, and marked Plaintiff's Exhibit 8, as follows:)

"Aug. 22—11.

"Dear Mr. Selover:

"I find a note stating that Kellogg will furnish a surety bond for the deferred payments and wanting me to write you my views of that arrangement. It is almost needless to say that a good bond would satisfy all my objections. In such case I would regard it as a good sale. Truly,

CHARLES A. MURRAY."

(Whereupon witness reads copy of night letter dated at Tacoma, Washington, August 28th, 1911, and marked Plaintiffs Exhibit 9, as follows:

"Tacoma, Wash., Aug. 28, 1911.

"George H. Selover, 926 Metropolitan Life Ins. Bldg.,  
Minneapolis, Minn.:

"In making contract please arrange that in any event you receive copy of whatever cruise shall be made in connection with these negotiations. I have another party ready to take this up on more desirable deal if this shall fail and a reliable cruise will greatly facilitate closing that deal.

CHARLES A. MURRAY."

(Whereupon witness reads letter dated August 30th, 1911, and marked Plaintiffs Exhibit 10, as follows:)

"Minneapolis, Minn., August 30th, 1911.

"Mr. Charles A. Murray, Tax Dep't, Northern Pacific  
Railway Co., Tacoma, Wash.:

"My Dear Sir: Your telegram of the 28th was received the 29th, and I at once telegraphed Mr. Aldrich to consult you respecting the final form of the papers and to include, if possible, that we receive a copy of the cruise report whether the other people buy or not. The contracts were sent to him several days ago, and you have before this, doubtless, received word from him.

"Yours truly,

"GEO. H. SELOVER."

(Whereupon witness reads letter dated September 4th, 1911, and marked Plaintiff's Exhibit No. 11, as follows:)

"Sept. 4—11.

"Mr. Geo. H. Selover, Minneapolis, Minn.:

"Dear Mr. Selover: It being labor day, I am obliged to address you by hand.

"I enclose draft of revised contract signed by Kellogg which I approve.

"Three things I arranged to have inserted are, provision that Kellogg's deed to corporation shall be filed for record by Trust Company as soon as your deed is delivered. This to give value to stock;

"Provision for copy of cruise;

"Provision that by-law shall protect stock pledge against transfers.

"I truly hope you will receive your \$80,000 promptly.

"Very truly, CHARLES A. MURRAY."



Q. (By MR. HADLEY.) Mr. Murray, those last letters you just read, those are letters written at the time the negotiations were on with Mr. Kellogg?

A. Yes, sir.

Q. And refers to Mr. Kellogg's negotiations?

A. Yes, sir.

THE COURT: The noon hour has arrived.

MR. HADLEY: One more question and I will be through.

THE COURT: All right.

Q. What Kellogg do you refer to?

A. Mr. F. P. Kellogg.

(Whereupon the jury was admonished by the court, and an adjournment taken until two o'clock p. m.)

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*TUESDAY, JULY 21, 1914, 2 P. M. SESSION.*

THE COURT: Do both sides concede the jury is present?

MR. EMERY: Yes, sir; we do.

THE COURT: Very well. Proceed.

CHARLES A. MURRAY (on the stand).

*Cross-Examination.*

By MR. EMERY:

Q. You practice law in Tacoma, Mr. Murray?

A. I am not in active practice now.

Q. At the time this transaction was taking place, were you in active practice?

A. Not in general practice, no.

Q. What were you doing?

A. Connected with the Northern Pacific.

Q. In what capacity?



A. Assistant tax commissioner.

Q. And had you been looking after the taxes for these people upon this property?

A. In connection with the business I did for them, I looked after the taxes sometimes. I do not recall now having had to do that.

Q. You said you were the statutory agent for the Columbia River Lumber Company?

A. Yes, sir.

Q. You mean by that you had the ordinary statutory appointment as an agent to accept service?

A. Yes, sir.

Q. That appointment did not give you any authority to sell land or anything of that kind?

A. No, sir.

Q. You say this letter you received from Mr. Selover told you they wanted to sell the land in question; would sell it for \$200,000 and pay a five per cent commission; is that correct,—is that the substance of this letter?

A. Yes. I had been doing business with that Company right along for years; and in fact they wanted to sell that land and had been trying to sell it for years, and had talked with Mr. Selover about it time and time again, and we are still wiring.

Q. Had you asked them to sell at a fixed price or to put a price upon it?

A. I wrote Mr. Selover for the price I might sell it and the commission.

Q. In this letter it told you to sell it for \$200,000 and five per cent commission to you if you sold it?

A. Yes, sir.

Q. Did it mention any terms of sale?

A. Terms were mentioned.

Q. Did that letter mention any terms of sale?

A. I cannot state.

Q. Did that letter contain any legal description of the land by which any stranger could identify it?

A. I doubt it. Any letter that passed between us would refer to only one body of land.

Q. True, but did that letter contain any legal description by which any stranger could identify it?

A. Yes, we had some correspondence.

Q. Have you any letters here that refer to any quarter or sections of land?

A. No, there are dozens without the descriptions.

Q. You understood it referred to the particular land in controversy, but there was no statement as to what particular land it was that he had?

A. Well, the land was described in a general way.

Q. Now, I will have to go back and ask you if his Honor, Judge Neterer, could find it without further knowledge than the letter contains?

A. No, sir.

(Witness excused.)

**THOMAS WINSOR**, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

*Direct Examination.*

By MR. HADLEY:

Q. Mr. Winsor, when did you first understand, and how, that the Columbia River Lumber Company owned lands in Chelan County, Washington.

MR. EMERY: I object to that as being immaterial and incompetent. We do not care what the understanding was or how he understood it.

THE COURT: Oh, he may answer it.

A. 1909.

MR. EMERY: It is going back into ancient history is all, your Honor.

Q. Through whom did you learn or gain that information ?

MR. EMERY: That is objected to also as being immaterial.

THE COURT: Let him answer.

A. Mr. Boone of Antioch claimed to have the selling of the land and I took up an examination of the land then personally.

THE COURT: The question is answered.

Q. When, if at all, did you first speak to Mr. Murray about it?

A. I think in August, 1910.

Q. You may state, Mr. Winsor, what the nature of any conversation was you had with him about the sale of these lands.

MR. EMERY: I object to it, your Honor, as being incompetent and immaterial, and wholly improper. In the first place the law requires that a contract with an agent to sell land shall contain a correct description of the land, and must provide the terms of sale. Your Honor has held they must prove this contract. The conversations with Mr. Murray do not prove anything and do not furnish the basis of negotiations.

THE COURT: Objection sustained.

Q. Mr. Winsor, state what you did, if anything, in regard to finding a purchaser for this specific property?

MR. EMERY: That is objected to, until authority to find a purchaser is shown. These people cannot prove a real estate contract to pay a commission in this way. If they had no authority to find one, your Honor, it would not entitle them to sue for a commission.

MR. THOMPSON: Your Honor, the plaintiff is not suing upon a contract for the furnishing of a purchaser, either in writing or not in writing. If one succeeds in obtaining a purchaser for another and the other accepts that service and ratifies the act of the agent, then the contract of ratification is binding, whether he could have sued upon the original contract and recovered or not. What we propose to show is that Mr. Winsor furnished the purchaser and they accepted the purchaser, and we expect to show by their qualified authority they made a written agreement with Mr. Winsor to carry out what he did and he proceeded to carry it out and then they set aside the stock which they were to give him.

(Argument continued.)

We have got to show that he earned that stock in the first place and they accepted his work and agreed to pay for this work after he done the work. This is simply a step to show what he did; that he put in a substantial compliance with the agreement with them, although it hadn't at that time reached the stage of writing, except through the letters to Mr. Murray. At the proper time we expect to put in the contract.

MR. EMERY: We contend then if the contract was not in writing to pay the commission no matter what the agent did, he could not recover. The contract to pay the commission must be in writing or it is void.

MR. THOMSON: We are not suing on a contract of *quantum meruit*.

THE COURT: As stated by me a moment ago, you set out a basis,—you allege a contract was entered into between the plaintiff and defendant, and that is the basis usually alleged in the contract and the step which leads up to the rights of recovery. Why not start there and find out where we are in relation to this, and then if it becomes necessary we can reach out and get other information. In the absence of that, I do not know whether this ought to be admitted or not. In connection with the issues as tendered, it might be immaterial.

(Argument continued by Mr. Hadley.)

THE COURT: Well, why don't you prove the contract or writing.

Q. (By MR. HADLEY.) Mr. Winsor, I want to call your attention to what purports to be a letter dated——

A. July 3rd, 1911.

Q. Yes. Did you receive that letter?

A. Yes, sir.

Q. Who did you receive it from?

A. Mr. C. R. Aldrich, chairman of the Sales Committee of the Columbia River Lumber Company.

Q. When did you receive it?

A. I received it August 3rd, 1911.

THE COURT: Let it be marked as an exhibit.

MR. EMERY: Your Honor, we object to that paper because it is incompetent and immaterial. It does not contain any description of the contract. It does not specify any authority which this agent has to sell any land which it represents. It is not a contract to sell this particular land nor to pay a commission. They are not suing on that contract at all.

THE COURT: Objection overruled.

MR. EMERY: Note an exception. I want to read half a dozen lines from one of the State Court decisions on which I am making these objections. I am reading from the 75th Washington in the case of *Cushman versus Evans*.

(Counsel reads from case cited and continues argument.)

THE COURT: I will receive the evidence at this time to see what it will develop.

MR. HADLEY: I will read this letter, Plaintiff's Exhibit No. 12



"Seattle, Washington, July 3, 1911.

*"To Whom It May Concern:*

"Mr. Thomas Winsor, of Seattle, is authorized to handle our timber and land in Chelan County, and is the only person holding such authority.

"Mr. Winsor is a thoroughly capable and able business man for this purpose and has been engaged in the timber and lumber business, directly and indirectly, in its various branches in the State of Washington during the past twenty-four years, and for about a dozen years prior to that time was engaged in the timber, lumber and salt industries in Michigan.

"We have given Mr. Winsor the exclusive privilege above referred to because we feel that he is well qualified to look after our interests. Respectfully,

"THE COLUMBIA RIVER LUMBER COMPANY,

"Per C. R. Aldrich,

"Chairman Sales Committee."

Q. After you received that, Mr. Winsor, what did you proceed to do?

A. I proceeded to examine the property, closing up the deal with F. P. Kellogg Lumber Company, so as to make an intelligent report of my work; of the amount of timber, and then aid the Company in closing up the deal with the F. P. Kellogg Lumber Company.

Q. Mr. Winsor, then what were the next step or dealings that you had with the Columbia River Lumber Company?

A. Why, in the closing up of that deal, there was an escrow agreement made, providing for my commissions



and for my services in making an examination of the land.

Q. Now, I will call your attention to that instrument and ask you if that is what you refer to?

A. Yes, sir; this is the escrow agreement.

MR. HADLEY: I will offer this.

MR. EMERY: Is that the same one of which a copy is attached to the complaint?

MR. HADLEY: Yes.

MR. EMERY: We object to it on the ground that it does not come within the statute of frauds and is incompetent, irrelevant and immaterial.

MR. HADLEY: I read from Plaintiffs Exhibit No. 13:

“Seattle, Washington, August 23rd, 1911.

“Union Trust Company, Chicago, Illinois:

“Gentlemen:

“The undersigned Columbia River Lumber Company, a corporation, F. P. Kellogg, Thomas Winsor, and R. H. Steeves have agreed, as is below stated, and direct you to make certain payments and disposition, as is embodied in this instrument, upon behalf of all the parties concerned.

“Reference is hereby made to an agreement dated August 23rd, 1911, between the Columbia River Lumber Company and F. P. Kellogg wherein the Columbia River Lumber Company have, upon the terms in said agreement mentioned, agreed to sell to F. P. Kellogg certain properties located in Chelan County, Washington, for the agreed price of \$225,000; also a certain escrow agreement dated August 23rd, 1911, directed to you as the

escrow agent providing for the payment by Kellogg, or his assigns, a corporation to be organized, as is provided in the agreement above mentioned, to you as escrow agent for the benefit of the Columbia River Lumber Company \$225,000, the purchase price of said properties. Reference is made to the above two agreements the same as if the terms of said agreement were here set out in full.

“Now, therefore, in consideration of the services rendered by Thomas Winsor and R. H. Steeves in negotiating and effecting a sale of said property, the Columbia River Lumber Company have agreed in event of said Kellogg’s carrying out completely the said proposed sale, to pay as a commission for perfecting said sale the sum of \$15,000, in manner and form following. Now, you are hereby requested and directed that when the certificates of stock mentioned in said agreements are delivered to you by F. P. Kellogg, or his assigns for the benefit of the Columbia River Lumber Company, to set over and hold for the benefit of Thomas Winsor \$10,000 worth of said certificates, and for the benefit of R. H. Steeves \$5,000 worth of said certificates, and when the cash shall be paid to redeem said certificates and the interest thereon, you are hereby further directed to pay to Thomas Winsor, of Seattle, Washington, the sum of \$10,000 plus the interest at 6 per cent. accrued thereon, and further, to pay to R. H. Steeves \$5,000, together with the interest accrued thereon at 6 per cent., said amounts to cover all the claim or claims of the said Thomas Winsor and R. H. Steeves against any of the parties to said transaction on account of commissions for the negotiating and completing of

sale of said property, the same to be deducted as hereinabove stated from the amounts to be turned over by you to the Columbia River Lumber Company, and the amount of the escrow agreement entered into between F. P. Kellogg and the Columbia River Lumber Company is varied to the amount of \$15,000.

“COLUMBIA RIVER LUMBER COMPANY,

(Seal.) “By GEORGE H. SELOVER,  
“Its President.

“By GEO. B. DARLING,  
“Its Secretary.

“F. P. KELLOGG,

“THOMAS WINSOR.

“R. H. STEEVES.”

MR. HADLEY: Do you object to the admission of this?

MR. EMERY: Yes; that is not set out in that complaint nor does it describe the property.

MR. HADLEY: It is the one just referred to in the contract I read.

Q. Do you know whether or not that is the agreement referred to in the agreement I have just read?

A. Yes, sir.

MR. HADLEY: I offer this instrument in evidence.

Q. That is, the agreement I just read, is the agreement with F. P. Kellogg?

A. Yes, sir.

MR. EMERY: We enter the objection to this exhibit, that it is not competent under the rulings of the Supreme Court. I think the contract should set forth

all the essentials of a complete contract. This gentlemen says that is the contract referred to. We have his word for it. We have a half dozen contracts dated August 23rd, and they are not alike. In short, it is having recourse to parol testimony to complete the commission contract. That is what the Supreme Court says cannot be regarded.

THE COURT: This may be received at this time.

MR. EMERY: Note an exception.

MR. HADLEY: Now, I read from Plaintiff's Exhibit No. 14.

"Minneapolis, Minn., Aug. 23, 1911.

"F. P. Kellogg, Esq., Seattle, Washington:

"Dear Sir: For one dollar and other valuable considerations, the receipt whereof is hereby acknowledged, we hereby grant to you the option to purchase from us at any time during a period of four months from the date hereof, our entire property located in Chelan County, Washington, the particular description of which is attached hereto and made a part hereof, upon terms and conditions as follows, to-wit:

"The purchase price of said property shall be \$225,000, to be paid as follows: \$80,000 upon delivery of deed; \$145,000 on or before five years from date of delivery of deed, \$140,000 thereof to be paid to Columbia River Lumber Company, and \$5,000 thereof to be paid to Charles A. Murray, of Tacoma, Washington, the unpaid purchase price to bear interest at the rate of 6% per annum, payable on or before the expiration of the five-year period.

"We will at once execute in your favor, a good and sufficient warranty deed, in fee simple, to said property

free and clear of all encumbrances, subject to survey errors and rights acquired by adverse possession (and reservations, etc., hereinafter set forth), and deliver same to the Union Trust Company in Chicago, Illinois, to be held by said company in escrow for delivery to you, in accordance with the agreement attached hereto and made a part hereof. We will furnish you with a complete abstract of said property for purpose of examination, as soon as the same can be secured after demand by you.

“You are to furnish and deliver to us when deed is delivered a surety bond satisfactory to us, issued by a surety company empowered to do business in the State of Washington, guaranteeing the faithful performance of the contract and payment of the balance to become due us. The payment of premium and renewal premiums for said surety bond not to exceed the total sum of \$6,000, shall be allowed and paid from installments due or to become due upon the purchase price, and said amount of premiums paid shall be deducted from current payments on purchase price upon presentation of receipt for premium payments. You are to further secure said payments by placing in escrow as herein provided, the entire capital stock of a corporation organized by you for the purpose of taking over and developing said property, the entire stock of said corporation to be \$225,000. The by-laws of the corporation shall provide that no transfer of the stock nor any interest therein shall in any manner affect or qualify the rights of the parties for whom the stock is held in trust nor the rights of the trustee in the execution of its trust.

"Said conditions are:

"1. You are to deliver to the said Union Trust Company of Chicago, upon receipt from it of said deed above mentioned, a deed to the corporation organized by you for the purpose of developing said property by erecting plant and facilities to manufacture and market lumber, which deed shall then forthwith be filed for record in Chelan County, Washington, by said Union Trust Company of Chicago.

"The name of the corporation shall be -----  
----- and be duly organized under the laws of the State of Washington.

"1 1-2. You are forthwith upon delivery of this option to you to have the timber on all of the lands hereinafter described carefully cruised, complete data of which cruise shall be made in writing, and certified by the cruisers making same, one copy of which cruise so certified shall be delivered to us.

"2. You are to agree that said corporation will issue and dispose of its bonds for a sum not less than \$180,000 and not more than \$225,000, the said bonds to become due at the expiration of or before ten years from date, and to bear interest at the rate of 6% per annum, and that the money received from the sale of said bonds, exclusive of the sum of \$80,000 to be paid to us, shall be used solely by said corporation for the building of a mill, the conduct of the business and payment of expenses incidental to the negotiation of said bonds.

"3. You are to agree that said corporation will set aside a fund of \$2 per thousand for every thousand feet of



timber manufactured and marketed from said property by it, which sum shall be used solely for the purpose of retiring the bonds above referred to, and a further minimum sum of \$2 per thousand for every thousand feet of timber manufactured and marketed from said property shall be used solely for the purpose of payment of the unpaid purchase price.

"4. You are to agree further that all of the net profits derived from the business, including the proceeds from the sale of the logged-off land, untimbered land, and timbered land, exclusive of timber, shall be applied solely to the payment of the unpaid purchase price, except such sums thereof as may be needed for the purpose of making payments to bondholders, it being understood that above excepted proceeds from the sale of logged-off land, untimbered land and timbered land, exclusive of timber, shall be applied to the payment of the principal of bonds only.

"5. You are to agree to act as manager of said corporation, after the sale of said bond issue has been consummated, for a salary of \$3,000 for the first year, increasing \$1,000 per year thereafter until the sum of \$5,000 is reached, but at no time are you to receive a salary in excess of \$5,000 per year; and you are to agree that no other officer of the corporation shall draw any salary whatsoever.

"6. You are to agree that the books of the corporation shall be open to the inspection of our officers or any of them at any and all times upon reasonable notice.

"Respectfully submitted,

"COLUMBIA RIVER LUMBER COMPANY.

"(Seal.)

"By GEORGE H. SELOVER,

"President.

"By GEORGE B. DARLING,

"Secretary.

"F. P. KELLOGG."

"State of Minnesota, County of Hennepin, ss.

"On the 7th day of Sept., 1911, before me personally came George H. Selover and George B. Darling, to me known to be the president and secretary, respectively, of the corporation that executed the within and aforesaid instrument, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes herein mentioned, and on oath stated that they were duly and regularly authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

"IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal on the day and year above written.

"(Seal.)

"ARTHUR H. SELOVER,

"Notary Public in and for the State of Minnesota, residing at Minneapolis."

MR. HADLEY: Following then is a description of the property which, on account of the time it will take, I will not go over. It described the property in Chelan county, Washington, minutely.

(Counsel continues reading from plaintiff's exhibit 14 as follows:)

"Union Trust Company, Chicago, Illinois.

"Gentlemen:

"The undersigned, Columbia River Lumber Company, a corporation, and F. P. Kellogg, of Seattle, Washington, hand you herewith a deed to timber property in Chelan

county, Washington, and instruct you concerning the same as follows:

"You are to deliver said deed to said F. P. Kellogg at any time with four months from the 23rd day of August, 1911, that said Kellogg tenders you.

"1. \$80,000 in cash or certified check.

"2. \$225,000 in certificates of stock (par value) in the corporation organized to take over and develop the timber property conveyed in the deed, as security for the payment of \$145,000, with interest at 6% per annum, principal and interest payable on or before five years from the date of delivery of deed.

"3. The affidavit of said Kellogg that the capital stock of said corporation is limited to \$225,000 and that the corporation is the one which will take over and develop the property.

"4. Said Kellogg's surety bond in favor of the Columbia River Lumber Company, and Charles A. Murray, guaranteeing the payment of \$145,000 on or before five years from the date of delivery of deed, with interest at 6% per annum, interest payable on or before the expiration of the five year period.

"Should you receive said \$80,000, you are to ascertain from an abstract, considered by yourselves reliable, if there are any valid encumbrances against said property, and, if so, you are to retain a sufficient sum out of said \$80,000 and satisfy the same, paying the balance to said Columbia River Lumber Company. Should there be no encumbrances you are to deliver the full amount to said Columbia River Lumber Company. In either event you

are to deliver to the Columbia River Lumber Company the surety bond and to hold the certificates of stock as additional security for the payment of the \$145,000 and interest above referred to, it being understood that the ownership of said stock shall remain in the parties to whom originally issued, or their assigns, until default.

“Should said sums be paid on or before maturity, you are to pay over, together with proportionate interest, \$140,000 to Columbia River Lumber Company and \$5,000 to said Murray and return the said certificates of stock to the said Kellogg. At any time during the five year period you are to accept any and all sums tendered to apply upon said indebtedness and apply in liquidation pro rata as the interests of the above creditors appear. Should said Kellogg make no sufficient tender within the four months, you are to return said deed to Columbia River Lumber Company.

“COLUMBIA RIVER LUMBER COMPANY.

“(Seal.)

“By GEORGE H. SELOVER,  
“President.

“By GEORGE B. DARLING,  
“Secretary.

“F. P. KELLOGG.”

Q. Mr. Winsor, did you make a cruise or any report upon the timber lands referred to and described in that contract?

A. I did.

MR. EMERY: I object to that as being irrelevant and immaterial and move to strike out the answer of the witness.

THE COURT: It may stand.

Q. State, Mr. Winsor, what your cruise and report consisted of?

MR. EMERY: Same objection.

THE COURT: What is the purpose, Mr. Hadley, of this testimony?

MR. HADLEY: We want to show that Mr. Winsor performed the services as provided here; that Mr. Kellogg, in that contract, was to have a cruise made of that property.

THE COURT: Proceed.

Q. I will call your attention, Mr. Winsor, to that paper, and state, if you can, what it is?

A. That is my report on that tract of timber belonging to the Columbia River Lumber Company.

Q. Is that the tract of timber described in the contract I have just read?

A. Yes, sir.

Q. Same property?

A. Same property.

Q. What did you do with this report?

A.—I delivered it to F. P. Kellogg and the Columbia River Lumber Company. I delivered a copy each to F. P. Kellogg and the Columbia River Lumber Company.

Q. And this is the copy that you retained, a duplicate copy?

A. Yes, sir.

Q. Is that your signature on the bottom of it?

A. That is my signature, yes, sir.

MR. HADLEY: I will offer it.

MR. EMERY: I do not think this is material, and I object to it for that reason.

THE COURT: Admitted. Proceed.

Whereupon said instrument was marked plaintiff's exhibit 15 and admitted in evidence, which said instrument is, in words and figures, as follows, to-wit:

"Seattle, Wash., October 9, 1911.

"F. P. Kellogg Lumber Company.

"Gentlemen:

"I herewith submit the report, as per your request, on the following timbered and other lands in Chelan county, Washington.

**TIMBERED LANDS—**

**Acres Stumpage (ft.)**

"Township 23, Range 19.

"Lots one and two of section three -----

80.73          None

"20 acres off of the east end of lot one can be irrigated, it is good fruit land. A high ditch could supply this entire lot; the highest point is 1500 ft. elevation, the lowest 900. Lot 2 is from 1500 to 1800 feet elevation and would be worth about \$10 per acre.

"Township 24, Range 19.

"All of fractional section 7.----- 645.28

"This is timbered and there is water and nearly 20 acres of orchard land in the S. E. corner of this section. There is also water



## TIMBERED LANDS—

Acres    Stumpage (ft.)

on the W. half of this Sec., on both sides of the quarter line; here also are favorable conditions for growing winter apples. On this Sec. there is about 100 acres of wheat land, the balance is best adapted for grazing. I estimate this will cut -----

5,700,000

*"Township 24, Range 19.*

"All of section 17 ----- 640.00

"The east half of this section is very good farming land. There is water on the S. E. quarter; a small orchard of 5 to 8 acres would be profitable along the course thereof. The west half of this section is suitable for grazing and is timbered. I estimate this will cut

3,500,000

*Township 24, Range 19.*

"All of section 19 ----- 644.22

"This is very well provided with water; it is favorable for fruit and all around farming, grazing, etc. I believe it will cruise-----

6,000,000

*Township 24, Range 19.*

"All of section 29 ----- 640.00

"This section is 5-6 grazing land, the balance is fruit and general farming land. Water runs through

## TIMBERED LANDS—

Acres    Stumpage (ft.)

a narrow coulee from the N. east-  
erly to the S. westerly corners of  
the section. I estimate this section  
will cut -----

6,000,000

*Township 24, Range 19.*

“North half section 33 ----- 320.00

“The S. E. 40 acres of this tract  
takes in the Nehockum Valley.  
This land will make a good fruit  
proposition; it is good property.  
The balance of this half section is  
timbered and 80 acres of it is low  
enough to be irrigated. I estimate  
this will cruise -----

2,000,000

*“Township 26, Range 19.*

“Lots 1 and 2,  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ ,  
S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  of  
S. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of  
section 1 -----

359.34

“The Entiat River runs through  
a part of this land. The banks,  
however, are high, and but a small  
part of it can be irrigated—I think  
about 10 acres. The slopes of the  
banks are exclusively grazing land.  
That upon the benches about 80  
acres can be used for other crops.  
This land will, I estimate, cut----

750,000

“All of fractional section 3 ----- 634.80

## TIMBERED LANDS—

Acres    Stumpage (ft.)

“This section is largely grazing land; there is water on it in three places running easterly; some of it runs the entire width of the section. Hogs, cattle and sheep, also poultry can be profitably raised on this section. Small orchard and garden tracts extend along the course of the river for a mile. This is a very valuable section. I estimate it will cut-----

6,000,000

“All of section 5 ----- 634.64

“This section is suitable for a stock ranch. It has water its entire width from the west center to the east center. It will supply everything needed for the feeding of its owner and his stock. It is not so valuable, however, as section 3. This, I estimate, will cut--

6,000,000

“All of section 7 ----- 644.79

“This section is all grazing land, a branch of Mad Creek runs through it. I estimate this will cut

4,000,000

“All of section 9 ----- 640.00

“This section is grazing land and is supplied with water from a branch of Mad Creek. I estimate it will cut -----

5,000,000

TIMBERED LANDS—	Acres	Stumpage (ft.)
"All of section 15 -----	640.00	
"This section is a duplicate of section 9 in every way and will cut about -----		6,000,000
"All of section 17 -----	640.00	
"This section is likewise a grazing stock ranch section. I estimate it will cut -----		6,000,000
"All of section 21 -----	640.00	
"This section is about the same as 17, not quite as good. It will cut about -----		5,000,000
"All of section 27 -----	640.00	
"This is fine stock ranch property combined with fruit and general farming. It's well supplied with water. I estimate it will cut -----		8,000,000
"All of section 31 -----	646.79	
"This is exclusively a grazing section, a branch of Mad Creek runs into it; the east half is quite level, the west very steep. I estimate it will cut -----		6,000,000
"All of section 33 -----	640.00	
"This section will make a good stock ranch combined with fruit and general farming. A branch of Mad Creek runs from near the S. W. corner to the N. E. corner. I estimate this will cut -----		6,000,000

## TIMBERED LANDS—

Acres      Stumpage (ft.)

*“Township 27, Range 19.*

“S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$   
of S. E.  $\frac{1}{4}$  of section 5 ----- 120.00

“This is of no value except for  
grazing. Two branches of Mad  
Creek run through it. I estimate  
it will cut ----- 1,500,000

“All of fractional section 7----- 645.20

“This is well adapted for a stock  
ranch; branches of Mad Creek run  
through every quarter section of it;  
is also very level. I estimate it  
will cut ----- 7,000,000

“All but the N.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of  
section 9 ----- 480.00

“This is exclusively grazing land;  
branches of the Entiat River run  
well into it. I estimate it will  
cut ----- 5,000,000

“The S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and S. W.  
 $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , section 11 ----- 120.00

“This is a very good piece of land  
and part of it can be irrigated. I  
estimate it will cut ----- 1,000,000

The S.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  and S. of sec-  
tion 13 ----- 480.00

“This is a fine property, as a  
branch of Stormy Creek runs into

## TIMBERED LANDS—

Acres    Stumpage (ft.)

it. It can be used for fruit and farming. I estimate this will cut 6,000,000

The N  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , and W.  $\frac{1}{2}$  of section 15 ----- 480.00

“This property is well watered; the Entiat River runs through the N. E.  $\frac{1}{4}$ . It will make a good fruit and stock ranch. Considerable of it can be irrigated. I estimate this will cut ----- 3,000,000

“All of section 17 ----- 640.00

“This will make a good farming, fruit and stock ranch; two branches of Mad Creek and one of the Entiat run through it. I estimate it will cut ----- 9,000,000

“All of fractional section 19--- 645.29

“Mad Creek runs through the S. W.  $\frac{1}{4}$  of this section. It is suitable for a stock ranch. I estimate this will cut ----- 6,000,000

“All of section 21 ----- 640.00

“This is a fine section; Mad Creek runs from N. to S. through the center of it. I estimate it will cut ----- 7,000,000

“All of section 23 ----- 640.00

“The Entiat runs through the N.



## TIMBERED LANDS—

Acres      Stumpage (ft.)

W. corner and Stormy Creek  
through nearly the center. It will  
make a fine farming and fruit and  
stock ranch. I estimate it will cut

6,000,000

“All of section 25----- 640.00

“There is 250 acres of fine wheat  
land on this section; there is water  
across the E.  $\frac{1}{2}$  and N. W.  $\frac{1}{4}$ ;  
small fruit tracts along the water.

I estimate this will cut ----- 6,000,000

“The west half and S. E.  $\frac{1}{4}$  of  
section 27 ----- 480.00

“This is a stock ranch, consider-  
able of it is quite level. I estimate  
this will cut ----- 5,500,000

“All of section 29 ----- 640.00

“Mad Creek and two of its  
branches run into and through it;  
it is principally a stock ranch  
property; everything for home con-  
sumption can be raised and some  
crops for the market. I estimate  
this will cut ----- 4,500,000

“All of fractional section 31 --- 647.52

This is exclusively grazing land;  
there is water running nearly  
through it. Estimate it will cut-- 4,000,000

“All of section 33 ----- 640.00

“This will make a much better

## TIMBERED LANDS—

Acres    Stumpage (ft.)

stock ranch than section 31. It has water well distributed and some fruit lands. I estimate it will cut -----

6,000,000

“The W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$  and the S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$ , section 35 -----

280.00

“The Entiat River runs through this section. The S. W.  $\frac{1}{4}$  of this 280 acres is good wheat land. A part of the balance is in the Entiat bottom and is worth \$75.00 per acre, the balance is grazing. I estimate it will cut -----

1,500,000

“Township 24, Range 20.

“All of fractional section 1 ----- 668.28

“This is stock ranch property; water is supplied on it near the S. quarter post from a spring that empties into the Columbia River. Two branches of a creek north of it run nearly to the center of section. I estimate it will cut on the N. W. slope -----

1,000,000

“All of fractional section 3 ----- 669.06

“This is also a stock ranch property; the creek, the branches of which run into section; one runs through the N.  $\frac{1}{2}$  of this section. It will cut about -----

2,000,000

TIMBERED LANDS—	Acres	Stumpage (ft.)
“All of fractional section 5 ----	671.08	
“A creek emptying into the En- tiat heads in this section. 320 acres of it is good wheat land; the S. 160 acres breaks over the divide to the Swakane River and is un- timbered grazing land. This sec- tion, I estimate, will cut -----		4,000,000
“All but the S. ½ of S. W. ¼ of section 7 -----	580.00	
“The Swakane River runs through the S. W. ¼ of this sec- tion. It is only fit for a stock ranch, etc. I estimate it will cut		1,000,000
“All of section 9 -----	640.00	
“This also is only fit for a stock ranch; it has water on three- fourths section. It will, I estimate, cut -----		1,000,000
“All of section 11 -----	640.00	
“This is a stock ranch proposi- tion; a creek that empties into the Col. River runs through it. I esti- mate it will cut -----		2,000,000
Township 24, Rangs 20—Contd.		
“All of section 15 -----	640.00	
“ A branch of the Swakane runs through it ;it is best adapted for a stock ranch, etc. I estimate it will cut -----		1,000,000

## TIMBERED LANDS—

Acres    Stumpage (ft.)

“All of S.  $\frac{1}{2}$  of setcion 17, except 10 acres in the N. E. corner    310.00

“The Swakane runs through the east end of it. It is principally grazing land. I estimate it will cut    1,000,000

“All of section 21 except the N. E.  $\frac{1}{4}$  -----    480.00

“The Swakane runs through this section; the land is nearly all grazing property. I estimate it will cut -----    1,000,000

“All of section 23 -----    640.00

“This section will make a good stock ranch, etc.; water from it flows to the Swakane on the south and the Columbia on the east. I estimate it will cut -----    2,000,000

“All but the N.  $\frac{1}{2}$  of the N. E.  $\frac{1}{4}$  of section 27 -----    560.00

“This is stock ranch property; there is water on north and south of section. I estimate it will cut    2,000,000

“Lots 2, 3 and 6, N.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , section 25 -----    240.00

“This borders on the Columbia River; it can be irrigated and is valuable. It is timberless.

TIMBERED LANDS—	Acres    Stumpage (ft.)
“All of section 33 -----	640.00
<p>“This is timberless, or nearly so. It will make a good stock and wheat ranch. It is well supplied with water.</p>	
“Township 25, Range 20.	
<p>“Lots 1, 2 and 3, S. <math>\frac{1}{2}</math> of N. E. <math>\frac{1}{4}</math>, S. W. and N. E. <math>\frac{1}{4}</math> of S. E. <math>\frac{1}{4}</math>, section 1 -----</p>	401.30
<p>“200 acres of this is good wheat land; it has water, also some tim- ber on the N. E. <math>\frac{1}{4}</math>.</p>	
<p>“The N. E. <math>\frac{1}{4}</math> and E. <math>\frac{1}{2}</math> of S. E. <math>\frac{1}{4}</math>, section 3 -----</p>	242.80
<p>“Part of this can be irrigated. It is timberless.</p>	
<p>“All of section 11 but 40 acres in the S. W. corner -----</p>	600.00
<p>“The Entiat runs along the south line, and through the S. W. corner there is a little timber on the north end of this section. The S. E. <math>\frac{1}{4}</math> of S. W. <math>\frac{1}{4}</math> may be used for a manu- facturing plant.</p>	
<p>“The N. E. <math>\frac{1}{4}</math> of N. E. <math>\frac{1}{4}</math>, section 13 -----</p>	40.00
<p>“This is timberless, or nearly so; it would sell readily to adjoining ranchers.</p>	

TIMBERED LANDS—	Acres	Stumpage (ft.)
“All of fractional section 19 ---	642.61	
“This section is stock ranch, wheat and fruit proposition; it is well watered from branches of Roaring Creek. I estimate it will cut -----		6,000,000
“All of section 21 -----	640.00	
“This largely a stock ranch proposition, two branches of a creek emptying into the Entiat run well into it. I estimate it will cut ----		6,000,000
<i>“Township 25, Range 20—Contd.</i>		
“All of section 25 -----	640.00	
“This is a stock ranch, etc., proposition; it has water and will cut		4,000,000
“All of section 27 -----	640.00	
“A creek emptying into the Entiat runs through this section. It is a good general ranching proposition. I estimate it will cut -----		6,000,000
“All of section 29 -----	640.00	
“This is a good section for many kinds of crops. It will cut -----		8,000,000
“All of section 31 -----	640.85	
“This is a stock, etc., proposition. I estimate it will cut -----		5,000,000
“All of section 33 -----	640.00	
“One third of this is wheat land; it should be used for general pur-		



TIMBERED LANDS—	Acres    Stumpage (ft.)
pose; it is well supplied with water.	
I estimate it will cut -----	4,000,000
“All of section 35 -----	640.00
“This is a stock ranch proposition, has water and will cut -----	4,000,000
<i>‘Township 26, Range 20.</i>	
“All section 1 -----	637.73
“This is a fine farming fruit and stock proposition; it has three branches of Mad Creek running through it. I estimate it will cut -----	6,000,000
“All of section 5 -----	634.57
“This is 50% wheat land; it can be worked to advantage for many purposes; it is also supplied with water. I estimate it will cut -----	5,000,000
“E .half lot 4, and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of section 7 -----	401.13
“It will make a good fruit and stock ranch. The Entiat runs through the west eighty of this section. I estimate it will cut -----	2,000,000
“All of section 11 -----	640.00
“This has two branches of Mad Creek running through it. It is a fine fruit, wheat, general farming and stock proposition. I estimate it will cut -----	7,000,000

TIMBERED LANDS—	Acres	Stumpage (ft.)
“All of section 13 -----	640.00	
“This is a general farming and stock proposition; it has water in four places on E. S. and W. sides. It will cut -----		6,000,000
“All of section 15 -----	640.00	
“Two-thirds of this is wheat land. It has water on N and E. sides. I estimate it will cut -----		5,000,000
“All of section 21 -----	640.00	
“This is a wheat and stock proposition. I estimate it will cut -----		4,000,000
<i>“Township 26, Range 20—Contd.</i>		
“All of section 23 -----	640.00	
“This is a wheat, fruit and stock proposition. I estimate it will cut -----		5,000,000
“All of section 25 -----	640.00	
“This is 60 % farming, balance stock proposition. It has water near every corner, and elsewhere. I estimate it will cut -----		5,000,000
“All of section 27 -----	640.00	
“This is a stock proposition; it has water from north to south, through the center thereof. I estimate it will cut -----		5,000,000
The E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ , W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ , S. W. $\frac{1}{4}$ and all of S. E. $\frac{1}{4}$ but N. E. $\frac{1}{2}$ , section 29	480.00	

## TIMBERED LANDS—

Acres    Stumpage (ft.)

"This is a good fruit and stock ranch proposition; the Entiat and Mad Creek runs through it. It will cut ----- 2,000,000

"All of fractional section 31--- 645.04

"This is a stock ranch proposition, has plenty of water. I estimate it will cut ----- 6,000,000

"All of section 35 ----- 640.00

"This is a wheat and stock proposition; it has water through it from east to west. I estimate it will cut ----- ---6,000,000

"Township 27, Range 20.

"All of section 19 ----- 635.04

"50 % of this is wheat land, balance stock, etc. I estimate it will cut ----- 8,000,000

"The S. half of the S. half, section 21 ----- 160.00

"Potato Creek runs through this; it is all good land. I estimate it will cut ----- 2,000,000

South half of N. half and south half of section 27 ----- 480.00

"Nearly all of this is wheat land; it has water from a branch of Mad Creek; it for other crops. I estimate it will cut ----- 6,000,000

## TIMBERED LANDS—

Acres    Stumpage (ft.)

"All of section 29 ----- 640.00

"There is some wheat land on this; Potato Creek runs through it; it is best for a stock ranch. It will cut -----

8,000,000

"All of section 31 ----- 632.23

"This will make a good wheat, stock and fruit ranch; the Potato Creek runs through it. It will cut -----

8,000,000

"All of section 33 ----- 640.00

"This is practically all wheat, etc., land; a branch of Mad Creek runs through it. I estimate it will cut -----

8,000,000

"All of section 35 ----- 640.00

"This is a wheat and stock proposition, also some orchard lands for a mile along the east line; the Mad Creek runs through it. I estimate it will cut -----

6,000,000

"Township 25, Range 21.

"All of section 5----- 641.36

"The N. E. corner of this is very close to the Columbia River; part of it can be irrigated from the river in time; a line water supply may reach it. It is timberless.

"All of section 19 ----- 639.98

"This joins the City of Entiat; it

TIMBERED LANDS—	Acres    Stumpage (ft.)
is grazing land and is timberless.	
“All of section 31 -----	641.94
“A half mile of this fronts on the Columbia River, and a creek runs through it from the west. It is a fruit and stock ranch proposition. I estimate it will cut -----	2,000,000
<i>“Township 26, Range 21.</i>	
“S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ , N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ , S. $\frac{1}{2}$ of S. $\frac{1}{2}$ of sec- tion 5 -----	240.00
“This is 50% fruit and farming land; it has water to irrigate for fruit; balance is grazing land. I estimate it will cut -----	500,000
“All of section 17 -----	640.00
“This is a fine orchard and stock proposition; it has considerable water for irrigating; it is quite valuable. I estimate it will cut --	2,000,000
“All of section 7 -----	653.54
“This is a general purpose prop- osition, principally stock. I esti- mate it will cut -----	5,000,000
“All of section 19 -----	653.12
“This is a wheat and stock prop- osition; it has lots of water well distributed. I estimate it will cut	3,000,000

## TIMBERED LANDS—

Acres    Stumpage (ft.)

“West half lots 3 and 4, S. W.		
1/4 of S. E. 1/4, Sec. 29 -----	416.84	
“The lots face on the Columbia; some good fruit orchards can be irrigated on them. I estimate it will cut -----		
		1,000,000
“All of section 31 -----	651.84	
“This is a wheat and stock prop- osition. I estimate it will cut----		
		3,000,000
“Township 27, Range 21.		
“Lot 4 and S. E. 1/4 of S. W. 1/4 of section 31 -----		
	83.48	
“This is a fine piece of land. I estimate it will cut -----		
		900,000
“Township 24, Range 21.		
“Lots 2, 3, and 6. East half of N. W. 1/4 and N. E. 1/4 of section 7		
	240.00	
“This is on the Columbia River; it is good property but timberless.		
“Lot 2, section 19 -----	40.00	
“This is facing on the Columbia and is very valuable.		
“Total -----	49,022.08	349,350,000

“I believe my estimates of this timber is conservative. However, the nature of my cruise is such I will not positively say that I am sure of more than three million feet. Thirty-eight thousand acres of it is timber, eleven thousand without timber. Thirty-five acres is well tim-



bered and from data I took in cruising it, I am reasonably sure it will average 9 M. to the acre.

"I have taped and made actual scale per acre of the various yields per acre, and I have also scaled with a log rule timber cut on adjoining land. The following is the actual scale of one acre cut into saw logs on adjoining land:

*Scale of saw logs cut on one square acre of Joe Oberley's Homestead, in Section 31, Township 27, Range 21.*

*Each tree scaled separate.*

Top M'sure feet	Butt M'sure feet	Length inches	Scale inches	Total feet
22	24	14	283	
21	22	16	289	
15	21	16	121	693
—	—	—	—	
"Top log in limbs uncut it would make fruit boxes.				
18	21	16	169	
15	18	18	121	
13	15	14	71	361
—	—	—	—	
14	15	81	81	
13	14	16	75	
10	12	16	36	192
—	—	—	—	
17	18	16	169	
16	17	16	144	
14	16	16	100	

Top M'sure feet	Butt M'sure feet	Length inches	Scale inches	Total feet
10	14	16	36	449
—	—	—	—	
26	30	12	363	
24	26	14	350	
23	24	14	313	
20	23	14	224	
15	20	16	121	1371
—	—	—	—	
21	23	14	253	
19	21	14	197	
16	19	16	144	
12	16	12	48	642
—	—	—	—	
24	26	14	350	
21	24	16	269	
18	21	12	147	
13	18	16	81	867
—	—	—	—	
26	30	36	1088	
21	26	30	542	1630
—	—	—	—	
26	28	12	363	
24	26	14	350	
21	24	14	253	
17	21	14	169	
13	17	14	81	1316
—	—	—	—	
36	40	16	919	

Top M'sure feet	Butt M'sure feet	Length inches	Scale inches	Total feet
32	36	16	732	
30	32	16	653	
28	30	16	578	
25	28	16	455	
21	25	16	308	
15	21	16	146	
10	16	16	36	3828
—	—	—	—	
38	44	16	1107	
34	28	16	877	
31	34	16	721	
28	31	16	579	
25	28	16	452	
22	25	16	339	
17	22	16	183	
12	16	16	69	4329
—	—	—	—	
36	38	16	919	
33	36	16	780	
30	33	16	653	
27	30	16	545	
24	27	16	401	
21	24	16	308	
15	21	16	146	
10	15	16	36	3788
—	—	—	—	

Total-----19,464

"I submit the scale of this acre as it is. Positive information upon diameter, taper and length of trees. The three largest trees may be one ft.—log longer than the average of all equally as large on the tract. On the other hand, large trees can be found made larger. I have counted up acres with 40 trees, many of which are as large as those shown in this scale, and none smaller. I have given in all 60 days of travel through this timber in the last year, constantly taking data and making calculations as to its value and that of the land. I have also been engaged by other lumbermen in this state and Oregon to set forth the practical side of other lumbering propositions for the last three years.

"In all my examinations, I have not found a proposition that will pay the profits that I believe this will.

"Very respectfully yours,

(Sgnd.)

THOS. WINSOR.

"THOS. WINSOR."

Q. Mr. Winsor, what else, if anything, did you then do in regard to the handling of this tract of timber?

A. Following the report, the bonding Company sent out an expert, so we went through the tract again with the expert, and he checked up my report. Following the making of these reports, the Bonding Company sent their expert here and I went through the tract again, when he checked up my report.

Q. Who was the expert? What was his name?

A. Mr. Elam, W. M., I think.

Q. I will call your attention, Mr. Winsor, now to what purports to be a prospectus of the F. P. Kellogg

Lumber Company, signed by what purports to be A. W. Elam. Have you looked over this?

A. Yes, sir, I have.

Q. What is it?

A. It is a copy of a report. It is a prospectus of the Bonding Company, putting up to buyers, to sell the bonds, and in it is contained a copy of the report of Elam to the Bonding Company.

MR. HADLEY: I will offer this instrument now in evidence.

MR. EMRY: I object to that as entirely incompetent and immaterial. It is a printed prospectus of the Bonding Company to sell some bonds.

Q. Did you ever see the report?

A. I never saw the report, no.

THE COURT: Objection sustained.

Q. Mr. Winsor, are there any contracts in writing or anyother dealings between you and Mr. Kellogg and the Lumber Company that you ever saw?

A. No.

Q. After this agreement, this escrow agreement and those contracts we have just introduced, were executed, did the Columbia River Lumber Company ever consult you any further with regard to the transaction with Mr. Kellogg?

A. Not a word.

Q. Never conveyed any of it to you at all or spoke to you about it?

A. No.

Q. Mr. Winsor, after this contract had been entered into and you had made your reports, what, if anything, did you do with regard to the stock?

A. Well, as soon as I was informed by F. P. Kellogg that the deal was closed, I sent a telegram to Mr. Selover to forward me my stock by express.

Q. And what did Mr. Selover say?

A. He didn't say anything; he didn't reply.

MR. EMERY: If you have the telegram, that is the best evidence of what he said.

Q. You have the telegram?

A. Yes, it is in the files.

Q. The original telegram?

A. The original telegram. You have got it in your files there.

Q. Well, did Mr. Selover return that telegram to you?

A. No, I got that telegram—oh, no, I have got a copy. I copied it.

Q. Did you get any reply from Mr. Selover?

A. No; no reply.

Q. When, then, if at all, did you hear from Mr. Selover or anyone with regard to your stock in this Company?

A. Well, I couldn't tell you without referring to communications I received from him.

Q. I will call your attention then to this letter and ask you to state what it is, if you know?

A. That is the letter I received from Mr. Selover in answer to one I registered. I sent several letters

and he answered none of them and I registered one finally. I sent several letters after I sent the telegram and couldn't get any reply, and then I sent one by registered mail.

Q. When?

A. About November, 1911. It followed some months after the closing of this deal, which, I believe, was closed in the early spring.

Q. And this is the letter which you received from Mr. Selover.

A. Yes.

Q. Then, did you receive any other communications from Mr. Selover except this?

MR. EMERY: I want to read this over.

MR. HADLEY: All right. I beg your pardon.

MR. EMERY: Oh, we do not object to this. We do not object to this.

THE COURT: Admitted.

MR. HADLEY: I read now from plaintiff's exhibit No. 16, as follows:

"Minneapolis, Minn., Nov. 7, 1912.

"Mr. Thomas Winsor, Seattle, Wash.

"My dear Mr. Winsor:

"Your correspondence has not had as much attention as it should, perhaps, on account of my absence from the city and other pressing matters, but I am now prepared to take it up with you fully.

"The original transaction, whereby, under certain circumstances, you were to become the owner of a cer-



tain amount of preferred stock in a corporation to be formed, was never carried out.

“Without going into the exact details, you must know that the deal that you had framed up there involved Kellogg’s ownership of the stock, we to own preferred stock to represent our future payments, and that also we were to be guaranteed payment of that preferred stock by a surety bond. You must know that that bond never was furnished, and that in consequence thereof Mr. Kellogg utterly failed to comply with the conditions.

“This resulted in that whole form of transaction falling to the ground, as without the security of the bond, our people absolutely refused to turn over the title to the property to a corporation in which Kellogg owned any of the stock until we were paid our price, so I had to revamp the whole matter in November in Chicago, which we did, to make a long story short, on the basis of a new corporation being formed to be called the Kellogg Lumber Company, and that all of the stock of that corporation should be issued to us. That we should then give Kellogg an option to buy the stock, common and preferred, with certain exceptions for a certain amount which was, I think, \$145,000.

“A bond issue of \$250,000 was provided for against the property of the Company, and Kellogg’s common and preferred stock is subject to this bond issue. Mr. Kellogg has not now, and never will have, any ownership of any of the stock of the Kellogg Company until that \$145,000 and interest is paid. In other words, we do not sell him

Q. Well, did he make it in writing or was it an oral request?

A. Well, he made an oral request and then he handed me a document to sign.

Q. Did you sign that?

A. No, I didn't sign that.

Q. This was in lieu of that document?

A. I signed that in lieu of the one he gave me.

MR. EMERY: This is a letter that is not addressed to the F. P. Kellogg Lumber Company, and not the Columbia River Lumber Company. It is not binding in any particular, and I object to it as being incompetent, irrelevant and immaterial. As counsel said, it is in response to a request by F. P. Kellogg as to what should be done with the stock.

THE COURT: Objection at this time is sustained.

MR. HADLEY: Well, I will bring it up later.

THE COURT: Yes.

Q. Mr. Winsor, what has been your occupation?

A. I have been a lumberman all my life.

Q. Have you been engaged in the lumber business--acquainted with lumber and timber values in the State of Washington?

A. Yes, sir.

Q. How long?

A. 27 years.

Q. Mr. Winsor, I believe you said you made a careful cruise and estimate of the value of the timber and the land belonging to the Columbia River Lumber Company in Chelan county?

A. I did. I appraised the timber and I appraised the land.

Now, Mr. Winsor, from your appraisal of the timber and the lands, what, in your opinion, is or was the value of them at that time?

MR. EMERY: That is objected to as incompetent and immaterial under the pleadings. No value alleged of the stock anywhere.

THE COURT: Let him answer.

A. My valuation would be a minimum of \$600,000, lands, timber and all.

Q. Is that the timber, or timber and lands both?

A. The timber and lands.

Q. Mr. Winsor, did you ever receive any stock from the F. P. Kellogg Lumber Company, or any other stock from the Columbia River Lumber Company.

A. No, sir.

Q. Have you ever received any money or cash or anything of value from them?

A. No, sir.

Q. Mr. Winsor, did you ever give anyone any authority to represent you in any change to be made between the Columbia River Lumber Company or F. P. Kellogg, or the F. P. Kellogg Lumber Company with regard to the sale of those lands under contract?

MR. EMERY: This matter is not pleaded and we are not charged with anything of that kind.

THE COURT: He may answer.

A. No, I did not.

Q. Did you have any knowledge that any change was

to be made between the Columbia River Lumber Company and F. P. Kellogg, or the F. P. Kellogg Lumber Company with regard to the contract in the record?

MR. EMERY: I think that is also immaterial and I object to it.

THE COURT: Objection overruled.

A. Not until I received that order from Mr. Selover.

Q. The one I just read to the jury?

A. Yes.

Q. Mr. Winsor, it is alleged in your complaint—you alleged in your complaint that you assigned your interest and claim against the Columbia River Company to the plaintiff in this action, Mr. Shields; is that correct?

A. That is correct.

MR. EMERY: If that is correct, there must be some evidence of it.

MR. HADLEY: I am going to show it.

Q. I call your attention to that instrument, and state what it is, if you know?

A. It is an assignment by myself, to Thomas Shields of this claim.

Q. Of your claim?

A. Yes, sir.

MR. HADLEY: I offer it in evidence.

THE COURT: Let it be marked.

MR. EMERY: We object to it as being incompetent and immaterial under the pleadings.

THE COURT: Objection overruled.

Whereupon said instrument was marked plaintiff's exhibit 17 and read in evidence as follows:

"Seattle, Washington, April 25, 1913.

"For value received, I hereby sell, assign and set over to Thomas Shields, all my right, title, claim and interest in and to a certain contract or agreement for commission entered into by me with the Columbia River Lumber Company wherein and whereby upon the sale of certain property of the Columbia River Lumber Company I was to receive a commission for my services in negotiating the sale of the property to the said Columbia River Lumber Company and making reports thereon, of Ten Thousand (10,000) shares of the capital stock of the Kellogg Lumber Company, a corporation, and I do hereby assign and set over all of my interest in said contract and in said stock, or any moneys derived in lieu of said stock, to my assignee, Thomas Shields, hereby granting unto him full power and authority to act in any manner he may deem best for the collection thereof.

"THOMAS WINSOR."

*Cross-Examination.*

By MR. EMERY:

Q. Mr. Winsor, your first talk about selling this property was had with whom?

A. Charles A. Murray.

Q. About when?

A. About August, I think, 1910.

Q. Well, did you have any writing from Mr. Murray authorizing you to sell that property?

A. There was correspondence between us.

Q. You had some letters between you and Mr. Murray signed by Mr. Murray individually?

A. Yes, sir.

Q. And by you individually?

A. Yes.

Q. And did you ever have any writing signed by the Company at that time, or about that time, authorizing you to handle the property?

A. No, sir.

Q. Your transactions were all had directly with Mr. Murray?

A. Yes, sir, in 1910.

Q. And did you ever have any other contract for the payment of commissions than the one that you have introduced here as signed by Mr. Aldrich as chairman of the Sales Committee, being plaintiff's exhibit 12?

A. Mr. Aldrich gave me that.

Q. Did you have any other than that?

A. Yes, sir.

Q. Where is it?

A. In the escrow agreement.

Q. And that is the only one besides that?

A. This is my authority as an agent of the Company.

Q. That is the only authority you had up to the time of the escrow agreement that you had?

A. From Mr. Murray.

Q. Did you have any written authority from Mr. Murray?

A. Yes, sir; in the correspondence between us.

Q. Your correspondence is in evidence here?



A. No, I don't think it has been put in evidence. It is here, though.

Q. Now, aside from this paper, exhibit 12, and the escrow agreement which is here in evidence attached to the contract of August 23rd, you have offered here no other proof of any contract in writing, have you?

A. Well, there was the agreement between F. P. Kellogg Lumber Company and the Columbia River Lumber Company, which is referred to in the escrow agreement.

Q. That is all part of the August 23rd agreement?

A. Sir?

Q. That you claim is part of the August 23rd agreement?

A. Yes.

Q. Were you present when this August 23rd agreement was made?

A. Yes, I think I was.

Q. Where was it made?

A. In Mr. Aldrich's office, I think.

Q. Well, was it signed there by the parties?

A. I believe it was; my memory is that it was.

Q. Who signed it there for the Columbia River Lumber Company?

A. Mr. Aldrich.

Q. Why, this contract purports to have been signed by Mr. Selover.

A. Mr. Aldrich or Mr. Baldwin signed the first one.

Q. This contract you offered in evidence purports to be signed by Mr. Selover and Mr. Baldwin.



A. Mr. Baldwin was present in Mr. Murray's office and it was sent to Minneapolis for Mr. Selover to sign.

Q. Mr. Baldwin didn't sign it?

A. He was there and signed it.

Q. Signed it?

A. I am not sure whether it was that instrument; there was an option signed also.

Q. If you have any other documents which refers to those transactions, let us have it; that establishes the contract between you. Now, referring to the agreement of August 23rd, which appears to have been signed by Mr. Selover, Mr. Darling, and Mr. Kellogg, I will ask you if, to your knowledge, Mr. Kellogg ever organized the F. P. Kellogg Lumber Company or any other corporation for the purpose of taking over this land under the laws of the State of Washington?

A. I don't know for sure what date he organized it.

Q. Do you know whether he ever organized a corporation for the purpose of taking over this land having a capital stock of \$225,000?

A. Not outside of the agreements we entered into; I do not know whether any other change was made.

Q. Do you know whether Mr. Kellogg ever delivered to the Columbia River Lumber Company any bond, surety bond, providing a guarantee to them of the payment of the balance of the money they loaned?

A. I do not.

Q. Do you know of his giving to the Union Trust Company or anyone else such a bond?

A. I do not.

Q. For the purpose?

A. I do not.

Q. Do you know of his filing with the Union Trust Company an agreement to pay \$2.00 a thousand for the lumber manufactured and the further sum of \$2 a thousand on the purchase price?

A. I do not know.

Q. From the sale of lumber from the timber land, should be applied solely to the unpaid purchase price?

A. Do I know?

Q. Do you know that he filed such an agreement with the Union Trust Company for the Columbia River Lumber Company or anybody else?

A. I do not know whether he filed it or not?

Q. Then you do not know of your own knowledge that this agreement of August 23rd was complied with, do you?

A. I do not know; I know nothing about it.

Q. But you did introduce Mr. Selover's letter in which he told you this agreement was not carried out.

A. That was long after the transaction had been closed.

Q. Did you investigate it to find out whether those statements were true or not?

A. Did I investigate it?

Q. Yes.

A. Why, I had his information there.

Q. And you knew nothing to the contrary but what those statements were true?

A. No, I didn't investigate it; I left it in my attorneys' hands as to the investigation about that.

Q. Do you know anything to the contrary, whether those statements are true or not?

A. No.

Q. You assumed them to be true?

A. What?

Q. The statements in Mr. Selover's letter of October the 16th.

A. I didn't assume them to be true. I contend some deal was carried out with Mr. Kellogg in a little different way.

Q. Do you know under what laws or under what state the F. P. Kellogg Lumber Company was organized?

A. I do not.

Q. Do you know what the amount of the capital stock was?

A. It was first had under the laws of Washington.

Q. Do you know what the capital stock was to be?

A. It was \$225,000.

Q. Do you know what it is?

A. No; \$145,000 of preferred stock, and then there was \$300,000 of common stock.

Q. That corporation calls for \$125,000 of common stock to be turned over to the Kellogg Lumber Company and turned over to them, do you know that kind of a company was organized—you said you do not know?

A. There was some changes made in the contract.

Q. Then the contract as made by you was not carried out?

Q. Yes, it was carried out.

Q. How do you know? What do you mean by saying it was carried out? What was done about it?

A. Mr. Kellogg went into possession.

Q. As proprietor or as managing agent for them?

A. I understand—

Q. What do you know of your own knowledge?

A. I don't know only what I am informed.

Q. I didn't ask you what you were informed.

THE COURT: Proceed.

Q. Do you know whether Mr. Kellogg ever furnished the Company with that insurance policy or \$50,000 for the payment of that balance?

A. Only what he said, that he did.

Q. Don't you know as a fact that he did not? Haven't you been so informed by Mr. Clark that he could not furnish that contract?

A. No, sir; I have been informed to the contrary. I am sure that I am informed that he did furnish it.

Q. Your agreement with Mr. Kellogg was that he was to buy the property for how much?

A. \$225,000.

Q. Now, how was he to pay for it?

A. He was to pay for it by paying \$80,000 out of the bond money.

Q. In other words, they were to put a mortgage on it for \$80,000, and the Columbia River Lumber Company was to have the money?

A. He then was to set aside out of the timber \$2 a thousand for the specific purpose of paying off this \$145,000 of preferred stock.

Q. Well, who was to have that?

A. That was to be paid upon this \$145,000 of preferred stock deposited with the Union Trust Company of Chicago.

Q. For whom?

A. For the redemption of this preferred stock.

Q. Whose was that?

A. \$5,000 of my own and \$5,000 was R. H. Steeves, and the balance the Columbia River Lumber Company.

Q. You were to pay \$145,000 to them out of the timber sawed on this land, and there was, in your honest opinion—this land and this timber was worth \$600,000?

A. Yes.

Q. And you sold it for \$225,000, and the Company got nothing but the mortgage they put upon it, and you ask for your commission for doing that kind of business?

A. I informed Mr. Aldrich.

Q. That is your position, that the timber was worth \$600,000, you were selling it for \$225,000, the contract was never carried out, and it was modified materially and you were to have \$10,000 commission?

A. If Mr. Kellogg accepted it.

Q. But you do not know whether Mr. Kellogg ever carried out his offer?

(No response by witness to last preceding question.)

(Whereupon a short recess was taken.)

(Witness excused.)

**C. R. ALDRICH**, called as a witness on behalf of the Plaintiff,  
being first duly sworn, testified on oath as follows:

*Direct Examination.*

By MR. HADLEY:

Q. Mr. Aldrich, you are one of the members of the Columbia River Lumber Company?

A. Yes, sir.

Q. What official capacity, if any, did you have in the year 1911?

A. None whatever.

Q. You had none. I will call your attention to this instrument here.

THE COURT: What exhibit is it?

MR. HADLEY: No, that is not admitted yet.

A. This doesn't show me holding any office.

Q. In what capacity, if any, did you act in regard to this corporation?

A. I tried to assist in getting a purchaser for it and dispose of the property.

Q. I will call your attention to this letter of July 3rd, 1911, in which you sign C. R. Aldrich as member of the—or chairman of the Sales Committee; is that the way it is signed there?

A. Yes, but that is not necessarily an office of the Company.

Q. Leaving aside the office that you had; what is the duty of the Sales Committee? What was that composed for? who composed it, and what was its duties?

A. In an effort to make a sale.

Q. Who were the other members besides Mr. Darling?

A. Who?

Q. No, I don't mean Mr. Darling; Mr. Baldwin—who were the members of the Sales Committee then?

A. I don't remember who the third member was; I think it was Mr. Selover.

Q. Where did this Sales Committee originate from? What power did it have?

A. None whatever.

Q. Didn't have any power; did it have any corporation—who created it? how was it created?

A. My recollection is that that was a matter of correspondence leading up to the business negotiation or sale.

Q. And there was a Sales Committee appointed by the Company?

A. I do not know as to that; I do not recall.

Q. You understood you were a member of the Sales Committee, Chairman?

A. I signed that letter in that way at the request of Mr. Winsor.

Q. How did Mr. Winsor come to ask you to sign as Chairman of the Sales Committee?

A. He wanted to have something to show that he was negotiating with some parties.

Q. Did Mr. Winsor draw this instrument?

A. No, I don't think so; part of it is his.

Q. I am not talkin about the body, how it come to be signed there by you?

A. He wanted it.



Q. Did you have any talks with Mr. Winsor about that time?

A. Yes, repeatedly.

Q. Looking to the sale of the property?

A. Yes.

Q. What price were you asking for that property?

MR. EMERY: I object to that as being immaterial. The whole matter is in black and white.

THE COURT: Now, was that contract carried out? I don't think that the answer—

MR. HADLEY: I will withdraw the question.

Q. Did Mr. Winsor ever come to you or make any demand or say anything to you about getting his stock from the Columbia River Lumber Company?

A. Not that I remember of.

Q. You do not remember of him coming to you and asking about his stock, but you said you were writing to Mr. Selover about it.

A. There may have been a question similar to that. I think I do recall a question similar to that along in 1913 sometime; probably; possibly in 1912. The latter part of 1912 I have a faint recollection of some such thing as that, about agreeing to write to Mr. Selover and requesting that he do the same thing.

Q. And you wrote that to Mr. Selover?

A. I think so. I do not recall positively that I did, but I think I did.

Q. Did you get any response from Mr. Selover?

A. Not that I recall, no.

Q. Do you remember telling Mr. Winsor that you had written two or three times to Mr. Selover and did not get any reply?

A. No, I do not.

Q. You do not remember having had any conversation with him at all where you made such a statement as that?

A. Yes, I talked with him once in a manner similar to that. I cannot recall the exact conversation, however.

MR. HADLEY: That is all.

MR. EMERY: That is all.

(Witness excused.)

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**F. P. KELLOGG**, called as a witness on behalf of the Plaintiff,  
being first duly sworn, testified as follows on oath:

*Direct Examination.*

By MR. HADLEY:

Q. F. P. Kellogg?

A. Yes, sir.

Q. And, Mr. Kellogg, you are the Kellogg mentioned in these numerous contracts and exhibits that have been introduced here as the person who negotiated for the purchase of timber lands in Chelan County, Washington, belonging to the Columbia River Lumber Company ?

A. Yes, sir.

Q. And, Mr. Kellogg, you, on the 23rd day of August, 1911, remember of entering into an agreement whereby you were to take or purchase all that property in a way?

A. Yes, sir.

Q. Now, after that agreement was entered into—those papers that are in evidence,—now, what then was done by you and by the Columbia River Lumber Company?

A. I organized a company known as the F. P. Kellogg Lumber Company, and issued bonds in the sum of \$250,000.

Q. Now, about when did that take place?

A. Along in the middle of the summer.

Q. I will call your attention first to this instrument, Mr. Kellogg, and see if you can identify it?

A. That looks like one of the documents.

Q. This instrument purports to be a deed from the—I will read only a part of it to see what it is:

“THIS INDENTURE, made this 2nd day of May, in the year of our Lord one thousand nine hundred and twelve, between Columbia River Lumber Company, a corporation of the State of Minnesota, party of the first party, and F. P. Kellogg Lumber Company, a corporation of the State of Nevada, party of the second part,

“WITNESSETH: That the said party of the first part, in consideration of the sum of eighty thousand dollars (\$80,000) and certain other valuable considerations, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, forever, all those tracts or parcels of land lying and being in the County of

Chelan and State of Washington, described as follows, to-wit:”

Now, this instrument purports to convey the title,—the property described in that instrument to the F. P. Kellogg Lumber Company. This is a certified copy from the records of Chelan County, and I will offer it in evidence.

(Whereupon said instrument was marked Plaintiff’s Exhibit No. 18 and admitted in evidence. Here insert Plaintiff’s Exhibit 18.)

Q. I will ask you to state whether or not the land described in that deed are the lands described in this contract and escrow agreement of August 23rd, 1911?

A. They are virtually the same. You will find a few mistakes in the descriptions, but they are virtually the same.

Q. Now after that—first you organized the corporation, I believe you say, where did you organize it?

A. It was organized in Seattle, but it was under the laws of the State of Nevada.

Q. Why did you organize a corporation under the laws of the State of Nevada instead of the laws of the State of Washington, as provided in this contract of August 23rd?

A. There were some things that we wished to do that we could not do under the laws of this State and we could do under the laws of the State of Nevada.

Q. Who suggested that you organize under the laws of the State of Nevada?

A. Why, I don't remember who suggested it; it was mutually agreeable between all parties concerned.

Q. Now, Mr. Winsor was not considered in the organization of that corporation?

A. Not directly, no.

Q. Now, I call your attention to this instrument, Mr. Kellogg.

MR. EMERY: Is that the deed?

MR. HADLEY: This is the trust deed.

WITNESS: Yes, I recognize that.

Q. What is this instrument?

A. That was the trust deed furnished.

MR. HADLEY: I will offer it in evidence.

MR. EMERY: I object to it as being immaterial and incompetent. The fact that this land was subsequently conveyed to some other corporation does not confirm this contract.

THE COURT: I will let it go in.

MR. EMERY: Note an exception.

(Whereupon said instrument was marked Plaintiff's Exhibit No. 19, and admitted in evidence.)

Q. Now, Mr. Kellogg, after the property was deeded to the F. P. Kellogg Lumber Company and this trust deed was executed, what then was done with regard to the transaction between you?—between them and the F. P. Kellogg Lumber Company and the Columbia River Lumber Company?

A. The company took over the property and proceeded to improve the property according to the stipulations in the agreement and trust deed.

Q. Was there any later agreement or transaction entered into between you and the Columbia River Lumber Company, any subsequent one to the one of August 23rd?

A. In regard to the purchase of the property?

Q. Yes, prior to the execution of this deed and the trust deed?

A. I don't know. There was several of those agreements entered into along about that time and they were remodeled. I don't understand exactly what you mean.

Q. Well, I will ask you to look over this, Mr. Kellogg. (Counsel hands paper to witness.)

(Whereupon a short recess was taken.)

Q. (By MR. HADLEY.) What is that instrument?

A. That agreement was entered into at that time.

Q. On November 29th, 1911?

A. Yes, sir.

Q. This agreement followed up the agreement of the 23rd of August?

A. Yes.

MR. HADLEY: I will offer this in evidence.

MR. EMERY: You offer it in evidence?

MR. HADLEY: Yes.

MR. EMERY: We do not object to it.

(Whereupon counsel for plaintiff read said instrument, which was marked Plaintiff's Exhibit No. 20, as follows):

"THIS AGREEMENT made this 29th day of November, A. D. 1911, by and between the Columbia River Lumber Company, a corporation of the State of Minnesota, party of the first part, and F. P. Kellogg, of the City of



Seattle and State of Washington, party of the second part, Witnesseth:

"1. That there shall be organized by said second party a corporation under the laws of the State of Nevada to be known as the F. P. Kellogg Lumber Company and to be empowered to buy and sell timber and timber lands and to engage in the manufacture of timber products in all its branches.

"It shall be provided in and by such charter, among other things, as follows:

"(a) For five (5) directors, two (2) of whom shall be elected by and shall represent the Preferred Stock hereinafter referred to, and one (1) of whom shall be elected by and shall represent each One Hundred Thousand Dollars (\$100,000) par value of the Common Stock hereinafter referred to.

"(b) That no additional stock shall be issued or authorized except by the written consent of the two directors hereinabove referred to as representing the preferred stock.

"(c) That no real property belonging to said corporation shall be sold or encumbered, and no lands or other property shall be purchased by the company with its funds, nor shall any indebtedness be incurred by it for such purpose without the consent of the said two directors so representing the preferred stock, such consent to be entered in the original minutes of the company. ' "

"2. The capital stock of the said corporation shall be Four Hundred and Fifty Thousand Dollars (\$450,000) in shares of One Hundred Dollars (\$100) each, of which



One Hundred and Fifty Thousand Dollars (\$150,000) par value in amount shall be six per cent. cumulative Preferred Stock and the balance shall be Common Stock; said Preferred Stock shall be preferred, both as to dividends and as to principal, and no dividends in excess of three per cent per annum shall be declared on the One Hundred Thousand Dollars (\$100,000) of said Common Stock to be issued to Clark L. Poole & Company, as hereinafter provided, until all the said Preferred Stock shall have been fully retired by the payment of par and all accumulated dividends thereon, and until such retirement of said Preferred Stock, no dividends shall be paid upon the balance of the Common Stock. The said Preferred Stock shall be redeemable at any time after there (3) years after the date of its issuance at par and accrued dividends, but the corporation shall have the right to repurchase any of the Preferred Stock at any time prior to three (3) years from its date of issuance upon the payment of all accrued dividends thereon to the date of such repurchase.

"3. The corporation shall authorize the execution of a trust deed covering a bond issue of Two Hundred and Fifty Thousand Dollars (\$250,000) gross, in substantial accordance with an agreement now in existence between said second party and Clark L. Poole & Company of the city of Chicago, together with such bonds as are required to be issued in connection therewith, and shall sell the same to the said Clark L. Poole & Company upon the terms referred to in said other contract.

“4. That the party of the first part will transfer free and clear of all encumbrance but subject to mineral reservations and rights-of-way of the Northern Pacific Railway Company, and the Great Northern Railway Company, or its subsidiaries, also subject to such claims as may exist arising out of adverse possession and subject also to errors growing out of any necessary correction of the Government surveys, a tract of land in Chelan County, Washington, a full and complete description of which, marked ‘Exhibit A’ is hereto annexed and made a part hereof, said deed to run to said F. P. Kellogg Lumber Company and to be delivered to the Central Trust Company of Chicago, to be by it recorded when this transaction is carried out.

“In return for such deed the said party of the first part shall receive from the said Trust Company:

(a) Eighty Thousand Dollars (\$80,000) in cash or its equivalent;

“(b) Certificates issued by the said F. P. Kellogg Lumber Company representing all of its said capital stock, made out to the party of the first part; and

“(c) A policy of insurance issued by some standard company upon the life of said second party hereto, in the sum of Fifty Thousand Dollars (\$50,000), payable originally to the said second party or his estate and by him assigned to the party of the first part by an assignment absolute in form, said second party hereby agreeing to pay the premiums thereon for a period of five (5) years, payable annually.

"5. Said first party shall upon the completion of the bond issue assign to the said Clark L. Poole & Company, or their order, Common Stock of said Kellogg Lumber Company to the amount of One Hundred Thousand Dollars (\$100,000) par value.

"6. Clark L. Poole & Company of Chicago, Illinois, shall be the registrars and transfer agents of the stock of said F. P. Kellogg Lumber Company, and said registrars shall stamp, or otherwise endorse, upon each certificate of stock, whether Preferred or Common, issued to the party of the first part, according to the terms hereof and excepting the One Hundred Thousand Dollars (\$100,000) par value of Common Stock, which is to go to Clark L. Poole & Company, a clear and concise reference to this contract.

"7. The conditions respecting said life insurance policy are as follows:

"In the event of the death of said second party should occur prior to the time when the full payment shall have been completed to the party of the first part for the stock, as hereinafter set forth, the said Fifty Thousand Dollars (\$50,000) shall be paid to the said second party and credited upon the balance unpaid upon said stock.

"In the event the balance should be less than the Fifty Thousand Dollars (\$50,000), then such difference shall be paid to said Kellogg's personal representatives. .

"8. And the said party of the first part hereby grants unto the said party of the second part the right and option at any time within five (5) years from January 1, A. D. 1912, to purchase of and from the said party of the

first part One Hundred and Fifty Thousand Dollars (\$150,000) par value of the said Preferred Stock and Two Hundred Thousand Dollars (\$200,000) par value of the said Common Stock for the sum of One Hundred and Forty-five Thousand Dollars (\$145,000), together with interest on said last named sum at the rate of six per cent (6%) per annum from this date.

“Upon the full payment of which sum and interest by said second party, or his heirs or assigns, to the said first party in accordance herewith, the said stock shall be assigned by the said first party to the said second party or to his order or estate.

“And the said second party hereby agrees that he will buy the said stock at and for the said price and will pay for the same on or before five (5) years from January 1, 1912; and that at the end of each calendar year, commencing with the first day of January, 1913, he will pay to the said party of the first part hereto, an amount of money equal to Two Dollars (\$2) for every thousand feet of lumber manufactured and sold by the F. P. Kellogg Lumber Company from the land hereinabove referred to, which said sum so paid each year shall be credited upon the principal and interest of said purchase price until the same shall have been fully paid.

“The by-laws of the corporation shall provide that the Board of Directors shall annually, out of the net profits, set aside the sum of at least Two Dollars (\$2) for each thousand (1000) feet of lumber manufactured and sold during the preceding twelve (12) months for the purpose of paying the dividends on the said Pre-

ferred Stock and retiring the same, but such by-laws shall not require the directors to set aside the said sum of Two Dollars (\$2) except out of net profits and shall permit the directors to reserve all net profits in excess of the said sum of Two Dollars (\$2) for each one thousand (1000) feet of lumber so manufactured and sold for a surplus. All sums paid upon the said Preferred Stock either as dividends or for the retirement thereof shall be received by the party of the first part and credited upon the said sum of One Hundred and Forty-five Thousand Dollars (\$145,000) and interest; and if such dividend in any year shall be less than a sum and amount equal to \$2 per thousand feet upon all lumber manufactured and sold by the company during the then past calendar year, the said second party to personally furnish the balance of such installment.

"So long as the said second party shall pay annually to the said first party the amount above called for by this agreement, the said second party shall have and hold the proxies of the said first party to vote the \$200,000 par value of common stock standing in its name and said party of the second part shall be the general manager of the operations of the Kellogg Lumber Company, and shall receive a salary at the rate of Three Thousand Dollars (\$3,000) per annum during 1912; Four Thousand Dollars (\$4,000) during 1913; and Five Thousand Dollars (\$5,000) per year thereafter for his said services.

"Should default be made by said party of the second part in respect to any one or more of said annual payments so to be made upon such purchase of said stock,



or if the said second party shall default and refuse to perform the duty of general manager of the said Kellogg Lumber Company for said period, then, and in either such event, the option hereby granted to said second party to purchase the said stock shall, at the option of said first party, terminate without notice and without any right to reimbursement whatsoever on the part of the said second party on account of any sum or sums which may have, at the time of such default, been paid on account of such purchase, time being hereby declared to be of the essence of this agreement; and in the event of such default the said first party is to be relieved from any liability whatsoever to the said second party.

“In the event, however, such termination of services of said second party as such general manager shall have been brought about by his death, then it shall be optional with his personal representatives as to whether they will go on and attempt to carry out said contract, except that the funds received from the insurance company on the policy above referred to shall be applied as hereinabove set forth.

“9. This agreement shall not grant the said second party any rights or interests whatsoever in or to any of the said lands above referred to, but shall be held and considered to be for no other purpose than to give him an opportunity to purchase the said common stock and preferred stock under the conditions above set forth.

“It is further understood that the agreement heretofore set forth by said second party to purchase the said Preferred and Common Stock for the sum and upon the

terms hereinabove set forth, is conditional upon the title to the said lands, so to be conveyed by party of the first part, being good; and the second further condition upon the carrying out by Clark L. Poole & Company and the party of the second part of the agreement hereinabove made respecting the sale by the Kellogg Lumber Company and purchase by Clark L. Poole & Company of the bonds of the said Kellogg Lumber Company.

“Said first party shall upon the completion of the bond issue assign to the said Clark L. Poole & Company, or their order, common stock of said Kellogg Lumber Company to the amount of One Hundred Thousand Dollars (\$100,000) par value.

“In Testimony Whereof the said party of the first part has caused the execution hereof by its president, attested by its secretary, and its corporate seal to be hereto affixed, and the said second party has hereunto set his hand, this 29th day of November, A. D. 1911.

“COLUMBIA RIVER LUMBER COMPANY.

“By GEORGE H. SELOVER, President.

“Attest:

“GEORGE B. DARLING, Secretary.

(Seal.)

“F. P. KELLOGG.”

MR. HADLEY: It is understood it is practically the same description of the lands as in that contract of August 23rd?

M. EMERY: Yes.

Q. (By MR. HADLEY) Now, Mr. Kellogg, after the execution of this agreement which you have just had your attention called to, what then was done with re-



gard to the organization of the F. P. Kellogg Lumber Company?

A. The Company was organized and everything was done in compliance with that agreement.

Q. Was the bond issue made?

A. Yes, sir.

Q. What became of the money derived from the bond issue?

A. It was expended in compliance with that agreement.

Q. Was \$80,000 paid over to the Columbia River Lumber Company?

A. Yes, sir.

Q. And the remainder of the funds used—

A. To improve the property according to that agreement.

Q. When was the stock of the F. P. Kellogg Lumber Company issued, and who to?

A. I don't remember the exact date; sometime after the first of April, I believe; between that and the first of June.

Q. (By MR. EMERY.) Here?

A. It was issued here, I believe.

Q. (By MR. EMERY.) What year?

A. 1912.

Q. This contract was dated November 29th, 1912?

A. 1912, I believe.

Q. The stock was issued then some two or three months after the organization?

A. Yes; sometime later, but I don't remember.

Q. Sometime about the first of April?

A. Yes, sir.

Q. And the bond issue was then sold?

A. Yes.

Q. Who was that stock then delivered to?

A. Delivered to the Columbia River Lumber Company.

Q. And Clark Poole & Company?

A. Clark Poole & Company 100,000 shares.

Q. And the remainder to the Columbia River Lumber Company?

A. Yes, sir.

Q. Who, if you remember, were the officers, directors of the Columbia River Lumber Company?

A. Mr. Selover, Mr. Aldrich, and Mr. Baldwin, I believe—Mr. Darling, I don't remember which it is.

Q. Were you a director of the F. P. Kellogg Lumber Company?

A. Yes, sir; I was president.

Q. You were president of the F. P. Kellogg Lumber Company?

A. Yes, sir.

Q. Then, after the bond issue had been sold and the moneys distributed under the terms of the contract, as required, then what did the F. P. Kellogg Lumber Company attempt to do?

A. Proceeded to build a mill and open up the property.

Q. You started in and built what sort of a mill?

A. Sir?

Q. What sort of a mill?

A. We built an eight-foot band mill—modern mill.

Q. Were there any logs cut?

A. Yes, sir.

Q. About how many logs were cut?

A. About 7,000,000 were brought down the drive; between six and seven million.

Q. Any dam built or anything of that sort?

A. Yes; there was a 600 foot dam built; 600 foot dam built and cribs and dams, and all the necessary work.

Q. For the operation of the plant?

A. Yes, sir, and logging camps established.

Q. Mr. Kellogg, this last contract that I have just called your attention to calls for an insurance policy; state the reasons for giving the insurance policy. Did you give an insurance policy?

A. Yes, sir.

Q. Who did you deliver it to?

A. Columbia River Lumber Company.

Q. What amount was that policy?

A. \$50,000.

Q. Same amount specified in the contract?

A. Yes, sir.

Q. Mr. Kellogg, in the agreement that is in evidence here of August 23rd, 1911, it was specified that a surety bond—you were to give a surety bond. Tell the jury why you did not; why you did not; why the surety bond was not furnished, and all about that transaction, and about this insurance policy?

A. Why, that matter was talked of, and I said I would give a surety bond if it was possible for me to get one. It was some insurance, and I attempted to get a surety bond, but no company would issue a bond of that nature and we afterwards agreed to the insurance policy.

Q. Who agreed with you to the insurance policy?

A. Columbia River Lumber Company.

Q. Who was acting for the Columbia River Lumber Company at that time?

A. Mr. Selover.

Q. Then that occasioned the entering into of this later agreement?

A. Sir.

Q. That occasioned the entering into of this last agreement of November 29th?

A. Yes, sir.

Q. When you agreed to give the insurance policy in place of the bond, that was satisfactory and they agreed to accept that?

A. Yes, they agreed to accept it.

Q. And waive the surety bond?

A. Yes.

Q. Now, was Mr. Winsor present when this last agreement was entered into? Where did you enter into that agreement?

A. I think that was entered into—it was threshed out in different places and through correspondence, but I think it was drawn up in Mr. Kellogg's office.

Q. Where?

A. Mr. Kellogg's office.

Q. I call your attention to one of the letters Mr. Selover addressed to Mr. Winsor and said in November he had to revamp the deal with you in Chicago?

A. November, what year?

Q. November, 1911?

A. Yes, I think that is correct.

Q. Then this is the contract that you referred to at that time, is it?

A. I think so; I believe so.

Q. Now, after this bond issue and the stock was issued and you went to work there, how long did you continue in the operation of those premises?

A. As an owner?

Q. Yes.

A. Till, I think, about the first of February last year.

Q. First of February, 1913?

A. Yes.

Q. There was a payment of interest that would fall due on the bonds in October, 1912, was that payment made?

A. Yes, sir.

Q. Now state how he came—state then what was done in February, 1913?

A. I went back to Chicago about that time and met with Mr. Selover and Clark Poole interests and talked over the proposition. Previous to that time it was agreed to advance extra money to carry on the business. I went ahead with the assurance—

MR. EMERY: Are you stating what happened orally or the contents of a writing?

A. This was not a contract in writing.

Q. (By MR. EMERY.) Letters or correspondence?

A. I have no correspondence.

Q. (By MR. EMERY.) Is this statement you are making contained in any correspondence?

A. Yes.

M. EMERY: Then I object to him stating what was in the writing.

A. (Continuing.) I will say all the letters I had regarding these transactions was removed during my absence over at the mill. I have no records whatever of any transactions that took place, letters or anything else.

MR. EMERY: You do not suspect Mr. Selover going out and taking them?

A. Yes, he came out and took them.

Q. (By MR. EMERY.) Have you served any notice on him to produce them in this case?

A. No, sir.

Q. Have you asked him for them?

A. I don't know what particular thing was mentioned in those—in that correspondence, but I know it was written between us. Those things were talked over in letters between us. What it was, I don't know; I don't remember.

MR. EMERY: I object to him stating orally the contents of the letters.

THE COURT: Yes. Proceed.



Q. (By MR. HADLEY.) Go ahead and state what you did.

A. Well, when I went back to Chicago at that time, Mr. Selover came on from Minneapolis and we talked over the proposition of the additional money that I was to get, and Mr. Selover objected to it, and it became apparent I would not have enough capital to carry on the business as originally planned, and they talked the matter over there and they thought the best thing to do with the Company would be to sell it.

Q. Sell what Company?

A. Sell the F. P. Kellogg Lumber Company, and they represented that it would be impossible to sell the stock of that Company as long as I had an option on it, and wanted to know if I would relinquish my right that I had to that stock—my option to buy it, and, as I was very anxious to see the Company a success, and everything had been agreeable up to that time, I agreed to do so, which I did, entered into an agreement with them whereby—

MR. EMERY: If you entered into an agreement, let us have the written agreement. Here it is.

(Counsel for defendant hands witness paper.)

THE WITNESS: That is it.

MR. HADLEY: I will offer this.

Whereupon said instrument was marked plaintiff's exhibit No. 21 and admitted.

(Plaintiff's exhibit No. 21, read in evidence without objection as follows):

"THIS AGREEMENT, made and entered into this 8th day of February, A. D. 1913, by and between F. P. Kellogg, of Seattle, Washington, party of the first part, and Columbia River Lumber Company, a corporation of the State of Minnesota, party of the second part, witnesseth that:

Whereas, under date of November 29, A. D. 1911, the parties hereto made and entered into a certain contract in which it was provided, among other things, that Columbia River Lumber Company grant unto F. P. Kellogg the right and option at any time within five (5) years from January 1, A. D. 1912, to purchase from it One Hundred Fifty Thousand Dollars (\$150,000), par value of the preferred stock, and Two Hundred Thousand Dollars (\$200,000), par value of the common stock of said F. P. Kellogg Lumber Company, for the sum of One Hundred Forty-five Thousand Dollars (\$145,000), together with interest on said sum at the rate of six per cent. (6%) per annum, and the said F. P. Kellogg agreed to purchase said stock and to pay for the same within said period, and also to pay on account Two Dollars (\$2) for every thousand (1000) feet of lumber manufactured and sold by said F. P. Kellogg Lumber Company; and said contract further provided as follows:

"Should default be made by said party of the second part in respect to any one or more of the said annual payments so to be made upon such purchase of said stock, or if the said second party shall default or refuse to perform the duty of General Manager of the said Kellogg

Lumber Company for said period, then, and in either such event, the option hereby granted to said second party to purchase the said stock, shall, at the option of said first party, terminate without notice and without any right to reimbursement whatsoever on the part of said second party on account of any sum or sums which may have, at the time of such default, been paid on account of such purchase, time being hereby declared to be of the essence of this contract; and in the event of such default the said first party is to be relieved from any liability whatsoever to the said second party.'

"And, whereas, the party of the first part has failed to make payment as required in said contract, and is wholly unable to further carry out said option and all of the terms and provisions of said contract dated November 29, 1911:

"Now, therefore, in consideration of the sum of One Dollar, in hand paid to the party of the first part by the party of the second part, and for other good and valuable consideration, the receipt whereof is hereby fully acknowledged, it is mutually agreed by and between the parties hereto as follows:

"1. Said agreement of November 29, A. D. 1911, by and between Columbia River Lumber Company and F. P. Kellogg is hereby cancelled and declared null and void, and said F. P. Kellogg hereby transfers and assigns to said Columbia River Lumber Company all his right, title and interest in and to said agreement and all interest arising or to arise thereunder, and all right, title and interest which he may have in and to any

capital stock of F. P. Kellogg Lumber Company, free and clear of all liens whatsoever, and hereby releases and relieves said Columbia River Lumber Company from any further liability under said agreement.

"2. F. P. Kellogg, the party of the first part, agrees to deliver to the party of the second part as soon as practicable the resignations of himself as president and as director and the resignation of all other officers and directors which are his nominees of said F. P. Kellogg Lumber Company, and also of the Entiat Boom Company.

"In witness whereof, F. P. Kellogg, party of the first part, has signed and sealed this instrument, and Columbia River Lumber Company, party of the second part, has caused this instrument to be signed under its corporate name by a duly authorized officer and its corporate seal to be hereunto affixed, the day and year first above written.

"F. P. KELLOGG (L. S.)

"COLUMBIA RIVER LUMBER COMPANY,

"By GEORGE H. SELOVER,

"Its President."

Q. Mr. Kellogg, I want to call your attention—just read that instrument.

(Counsel for plaintiff hands witness paper.)

Q. (Continuing.) Did you receive an instrument of that sort from Mr. Winsor?

A. I believe so. I recognize that.

Q. What was the occasion of your requesting a letter of that sort?

A. We delegated the Union Trust Company as a trustee of that stock originally and afterwards it was not agreeable to the Clark Poole Company on account of their doing business with the Central Trust Company of Illinois, and was changed at that time and, I believe, that was at the request of the Columbia River Lumber Company.

Q. Did they request you to get anything from Mr. Winsor in regard to the handling of that stock?

A. I believe they asked me to have them appointed trustees of that stock.

Q. In that behalf then you sought Mr. Winsor to have such a change as that made?

A. Yes, sir.

Q. And you requested him to furnish you that in writing?

A. Yes, sir.

Q. Is this the instrument that you received from him?

A. Yes, sir.

MR. HADLEY: We now offer it in evidence.

MR. EMERY: I do not think this is material or competent.

Q. I call your attention to plaintiff's exhibit No. 22:

"Seattle, Washington, May 7, 1912.

"F. P. Kellogg Lumber Company, Seattle, Washington.

"Gentlemen:

"With reference to the sale from the Columbia River Lumber Company to yourselves of certain timber property in Chelan county, and the issuance of stock in your

company, pursuant to agreements of August 23rd, 1911, wherein it was provided that stock in this company should be delivered to the Union Trust Company, of Chicago, beg to state it is satisfactory with us that the stock be delivered to the Columbia River Lumber Company, instead of the said Union Trust Co., and, in this respect, waiving no other or further conditions in said agreements of August 23rd, 1911.

“Yours very truly,

Diet. ESH.

“THOMAS WINSOR.”

Q. Mr. Kellogg, this letter was secured about the time that the stock was issued in the F. P. Kellogg Lumber Company, was it not?

A. Yes, sir.

Q. Along about that time, and that was to fix the disposition of the interests Winsor had in the transaction?

A. Yes, sir.

Q. Now, at the time you made this final settlement and when this last written instrument was signed in Chicago, was Mr. Winsor present, or anyone representing him?

A. No, sir.

Q. Did you or anyone else that you know of consult him with reference to that final disposition of the matter?

A. No, sir.

Q. Now, in February of 1913, when you were in Chicago, I believe that you said in October the year previous you had paid the interest on the bonds?

A. It had been paid, yes.



Q. Had been paid?

A. Yes.

Q. Was there any interest due at that time, at the time of this final settlement?

MR. EMERY: Who obtained the interest?

A. No, I think not. No interest due at that time.

Q. The interest would have been due on April first?

A. April the first and June the first, I believe, semi-annually.

Q. April first and October first?

A. Yes, October first.

Q. Did you have any funds or money on hand at that time?

A. Yes, sir.

Q. Had you defaulted in any of the conditions of that contract with them?

A. No, sir.

Q. How much money did you have on hand at that time?

MR. EMERY: I do not think we can go into that, your honor. It is immaterial and incompetent, and I object to it for that reason.

THE COURT: Let him answer.

A. My remembrance is there was something like \$35,000 due from the bond sales at that time.

Q. \$35,000 coming on the bond sales?

A. I believe so; about that.

Q. That is in February, at the time you surrendered this property to them?

A. I believe so; yes, sir.

*Cross-Examination.*

By MR. EMERY :

Q. You mean they had \$35,000 worth of bonds which they had to sell, is that what you mean ; or do you mean they had the cash on hand ?

A. Well, virtually the same thing. They had under-written the bonds and the money was available at that time.

Q. Had they sold the bonds ?

A. I don't know.

Q. Don't you know they had not sold the bonds ?

A. No, I do not.

Q. Well, do you know they had cash on hand.

A. I know I couldn't get the cash.

Q. Do you know they had the cash on hand ?

A. Yes, sir.

Q. You were, however, given the money ?

A. By payment from Clark Poole.

Q. That is what you meant by saying they had the cash available ?

A. Yes, sir.

Q. Mr. Kellogg, how much of the Kellogg Lumber Company did you own ?

A. I didn't own any.

Q. Didn't own a single share ?

A. Yes, sir.

Q. There was one share issued to qualify you as a director ?

A. I believe so.

Q. And you immediately signed that certificate on the back and turned it over to the Columbia River Lumber Company?

A. I don't remember; I think perhaps I did.

Q. And that is all the stock you ever owned in the Kellogg Lumber Company?

A. Yes, sir.

Q. Who did own the stock?

A. The Columbia River Lumber Company owned 350,000 shares.

Q. 350,000?

A. And Clark L. Poole 100,000.

Q. Clark Poole & Company negotiated the marketing of the bonds, did they?

A. Yes, sir.

Q. And how much of a mortgage did the Columbia River Lumber Company have on its property for the Kellogg Lumber Company?

A. \$250,000.

Q. In addition to that there was preferred stock issued of how much?

A. \$150,000.

Q. And how much common stock?

A. \$300,000.

Q. And of that common stock, Poole & Company negotiated the stock and got \$100,00 for a bonus?

A. Yes, sir.

Q. And the rest the Columbia River Lumber Company got?

A. Yes, sir.

Q. And the rest of the property, free from encumbrance of the Columbia River Lumber Company, was deeded over to the Kellogg Lumber Company and then mortgaged as security for those bonds, is that it?

A. No, sir.

Q. Well, what was given as security for it.

Q. I understand there was a mortgage on that property.

Q. There was a mortgage?

A. Yes.

Q. How much of a mortgage?

A. Quite a large amount.

Q. How much?

A. I don't know.

Q. Didn't your contract provide it should be free and clear from encumbrance?

A. Yes, sir.

Q. When that deed was given was that property absolutely free from encumbrance, and clear?

A. I don't think so.

Q. Didn't you give a warranty deed—I mean, didn't the Kellogg Lumber Company give a deed free and clear?

A. Yes, sir.

Q. Would the bonding company or the mortgage company have taken the deed was not clear?

A. No.

Q. Then, at the time it was given, it was free and clear?

A. Yes, sir.

Q. Who paid that mortgage or encumbrance?

A. I don't know who paid it.

Q. Did you pay it?

A. No, sir.

Q. Did the Kellogg Lumber Company pay it?

A. It was worked around through the transactions in some way, so I understood, that mortgage was satisfied.

Q. Now, when, that property was brought to you by Mr. Winsor, he was the man that proposed the sale to you, was he?

A. Yes, sir.

Q. Where was that?

A. In Seattle.

Q. And the purpose of it was to sell you the property?

A. Originally, yes, sir.

Q. And you were to buy the property?

A. Not originally.

Q. You were to buy the property and pay for it and have it yourself; that is the object you had in view?

A. Not originally, no, sir.

Q. Well, wasn't that the object at the time you talked with Mr. Winsor?

A. Yes, sir; that was a later deal.

Q. And you didn't have the money to pay for it?

A. No, sir.

Q. And, therefore, you were to borrow \$80,000 on the property itself, and you were to organize a corporation in Washington for \$225,000, and you were to turn over all that stock to the Columbia River Lumber Com-

pany, and you were given in consideration of that an option to purchase that land, weren't you?

A. Yes, sir.

Q. Did you ever exercise that option?

A. No, sir.

Q. And then, upon that option being exercised there was to be turned over to Mr. Winsor or the Union Trust Company, \$10,000, or rather held for him until you paid for it and then the money was to be turned over?

A. There is a difference of opinion.

Q. Isn't that what you understand the contract means?

A. At the beginning.

Q. Isn't your understanding of that contract of August 23rd to this effect: That the Kellogg Lumber Company was to be formed, or some lumber company, under the laws of the State of Washington. The Columbia River Lumber Company was to transfer that property free and clear to this new corporation. It was then to be bonded for \$80,000, capital stock was to be issued for \$225,000, and that capital stock was to be placed in the Union Trust Company and you were given an option to buy it, and if you bought that stock, the company or Union Trust Company was to hold \$15,000 of it for Steeves and Winsor, and when you paid for the stock they were to have the money for that—to pay the money for that stock to Steeves and Winsor?

A. I think my understanding at the time the deal was consummated was they were entitled to the stock.



Q. When that deal described in that particular instrument was consummated?

A. Yes.

Q. Now, did you ever consummate that deal; just answer frankly?

A. I think you misunderstand me. I think when the deal was consummated, as far as the deal was completed, they were to get the stock.

Q. Well, did you ever buy the property?

A. No.

Q. When that fell down you were unable to furnish the surety bond but you furnished a life insurance policy and you arranged with them to create another company under the laws of Nevada for \$450,000, and mortgaged the property for \$250,000, and to make the preferred stock \$150,000 and \$300,000 common stock, giving Poole & Company \$100,000 of the common stock and giving you all the preferred stock?

A. That was the arrangement.

Q. Now, did you ever exercise that option and purchase the stock?

A. No, sir.

Q. How much money did you ever pay to the Columbia River Lumber Company for their land, of your own?

A. How much did I pay of my own?

Q. Yes.

A. I never paid anything.

Q. Did you pay the interest on those bonds that you said were paid, the first year's interest, or the first term interest?

A. I didn't pay it personally.

Q. Did it come out of your pocket?

A. No, sir.

Q. Who paid it?

A. I think Clark Poole & Company.

Q. They were the persons who had the selling of the bonds?

A. Yes, sir.

Q. Did you pay any premium on the \$50,000 insurance policy which you turned over to the company?

A. Yes, sir.

Q. How much did you pay for it?

A. I have forgotten the amount of the premium.

Q. Wasn't it \$400?

A. Substantially that.

Q. That was one year's premium?

A. Yes, sir.

Q. You never paid any other premium?

A. No, sir.

Q. The policy lapsed?

A. Yes, sir.

Q. Were you, at the time these negotiations were taken up, able to comply with the terms and conditions of that agreement of August 23rd. You were to furnish \$50,000 surety bond and organize a company in accordance with that contract?

A. At what time?

Q. At the time that contract was made, August 23rd, 1911?

A. No. It became impossible for me to get this bond; never got a bond.

Q. Did Mr. Winsor assign to you or agree to assign to you any part of his alleged commission?

A. Yes, sir.

Q. When did he make that agreement?

A. At the time these negotiations were pending.

Q. Which negotiations, before August 23rd, before that contract of August 23rd was made?

A. Yes, sir.

Q. How did he come to make that agreement with you?

A. The original agreement that I made with Mr. Winsor was not for a bonding proposition, but was for the sale of the property.

Q. But you were unable to carry that out?

A. Sir?

Q. That was never put in writing and carried out?

A. No; I went to Chicago and framed up this bond deal.

Q. When was the agreement made to assign you one-half of the \$5,000?

A. It was made at the time I came back with the bond proposal.

Q. And before it was consummated?

A. Before it was cash.

Q. Well, has that agreement ever been pledged?

A. No, sir.

Q. You claim to be the owner of one-half of that \$10,000 Mr. Shields is suing for?

A. There is a misunderstanding about that.

Q. You claim to be the owner of one-half of that?

A. Yes, sir.

Q. You were to get a commission of \$5,000 for buying the property yourself, weren't you?

A. Yes, sir.

MR. EMERY: I think that is all at this time.

*Re-Direct Examination.*

By MR. HADLEY:

Q. You testified a moment ago that the policy lapsed and you paid only one premium; what was the reason the policy lapsed?

A. I had never severed my connection with the Company.

Q. Do you remember when you took that policy out?

A. About the time this deal was consummated.

Q. Was that policy paid up to a time later, at the time you signed this last waiver?

A. Yes, sir.

Q. Mr. Kellogg, you testified a moment ago you didn't pay the interest on those bonds; you thought Clark Poole paid it; did they pay it out of the money derived out of the bond issue?

MR. EMERY: I object, unless he knows, as being incompetent.

A. They paid it out of the proceeds from the bond sales.

Q. (By MR. EMERY.) How do you know?

A. Because it was a matter of record on the books.

MR. EMERY: If it is a matter of record on the

books, I ask that the books be produced and the testimony stricken and ask that the jury be instructed to disregard it.

Q. Do you know it from any other source than that source? How did it come to be on your books. Did you put it on?

A. Yes, sir.

Q. How do you know they paid it out of the bond?

A. From correspondence with Poole & Company.

Q. And have you any correspondence with Poole & Company?

A. No, sir.

MR. EMERY: We will admit they paid it from the proceeds of the bond, if that is what you want to show.

MR. HADLEY: That is what we want to show.

MR. EMERY: We paid it out of our property.

Q. Mr. Kellogg, did you have any talk with Mr. Selover, or any of them, before you signed this agreement about your surrendering all that property?

MR. EMERY: Oh, I object to that as being incompetent. The agreement, if any, was reduced to writing, and is the best evidence.

THE COURT: He may answer.

A. Yes, sir.

Q. What was it?

MR. EMERY: That is objected to as being incompetent.

THE COURT: He may answer.

A. We had a great deal of correspondence and personal talks in regard to the conduct of the property from

time to time. Statements were rendered and we were in touch on all those matters.

Q. What, if anything, was said about the throwing up of this, turning back of this property, or the option on that stuff; whether or not you should receive anything out of it?

A. Whether I was to receive what?

Q. Receive anything?

A. Yes, sir.

Q. You say they were going to sell it?

A. Yes, sir; I was to receive \$10,000.

MR. EMERY: There wasn't any agreement of that sort in writing; neither is it pleaded; neither is it material in this action.

THE COURT: Objection sustained.

MR. EMERY: And I ask that the answer be stricken.

THE COURT: Proceed.

*Re-Cross-Examination.*

By MR. EMERY:

Q. From the time this agreement was entered into you became the manager of the corporation?

A. Yes, sir.

Q. And you were the person who built the dams and cribs and did the work as manager, under your supervision?

A. Yes, sir.

Q. You paid them as manager of the Kellogg Lumber Company?

A. Yes, sir.



Q. Did you receive a salary as manager of the Company?

A. Yes, sir.

Q. And it was always paid in full, wasn't it?

A. Yes, sir.

*Re-Redirect Examination.*

By MR. HADLEY:

Q. Under the agreement of August 23rd, 1911, you were to receive a salary as manager?

A. Yes, sir.

Q. You were at all times to receive it?

A. Yes, sir.

THE COURT: The agreement shows that.

(Witness excused.)

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**THOMAS WINSOR**, recalled as a witness on behalf of the Plaintiff, being already sworn, testified on oath, as follows:

*Direct Examination.*

By MR. THOMPSON:

Q. Mr. Winsor, you have heard the testimony just given by Mr. Kellogg, did you?

A. Yes, sir.

Q. With reference to the deal, particularly that he made which was called the waiver deal down at Chicago, by which he released his rights under the original contract. You heard his testimony with regard to that?

A. Yes, sir.

Q. I will ask you what you know about any such agreement as that being made?

MR. EMERY: I object to that as being immaterial.

THE COURT: He may answer.

MR. EMERY: Note an exception.

A. I knew nothing about it.

Q. When did you first find out any such thing had been done?

MR. EMERY: That is objected to as being immaterial.

THE COURT: He may answer.

A. Yesterday.

*Cross-Examination.*

By MR. EMERY:

Q. You testified to having cruised this timber, I believe?

A. Yes, sir.

Q. Are you a cruiser?

A. Yes, sir.

Q. How long have you followed that business?

A. Pretty near all my life; ever since my teens.

Q. You have lived in Seattle a long time?

A. 27 years.

Q. Are you the same Thomas Winsor who formerly managed and controlled and run the Detroit Hotel on Occidental Avenue?

A. Yes, sir.

Q. Were you arrested in connection with running that hotel?

A. Yes.

Q. As a disorderly house?

A. Yes.

Q. When was that?

A. 1904 or 1905.

Q. Were you convicted?

A. No, sir.

Q. Did you plead guilty?

A. No, sir.

Q. Was the case ever tried?

A. No, sir; the prosecution would not come into court and try the case, and the court struck it from the calendar.

Q. You continued to manage the house after that?

A. Yes, sir. That is the only time I was ever arrested in my life.

Q. A large number of other persons were arrested from the same house?

A. I believe my son was arrested with me.

MR. EMERY: That is all.

THE WITNESS: I would like to explain that transaction.

MR. EMERY: All right. Do all the explaining you wish.

THE COURT: I do not think it is material.

THE WITNESS: Two officers were trespassers in my house and I ordered them out and one of them struck me, and my son knocked one of them down, hit one of them in the stomach, and he doubled up, and I jumped on him, and he hit the other in the mouth and downed him, and they had us arrested for assault and battery.

THE COURT: The jury is instructed to eliminate this examination with reference to the hotel.

THE WITNESS: It is an infamous lie if anybody said I ran a disorderly house.

MR. EMERY: I was so informed, and I wanted to be informed correctly.

(Whereupon the jury was duly admonished by the court, and an adjournment was taken until to-morrow morning at ten o'clock.)

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WEDNESDAY, JULY 22<sup>nd</sup>, 1914. TEN A. M. SESSION

THE COURT: Both sides concede the jurors are present?

MR. EMERY: We do, your honor.

MR. THOMPSON: We will rest.

MR. EMERY: I wish to call Mr. Kellogg for one or two questions on cross-examination before they rest. I have two telegrams, one by Mr. Clark and one of Mr. Kellogg in reply. I wish to introduce them as part of the cross-examination.

THE COURT: Proceed.

MR. EMERY: Very well; I understand.

At this time the defendant moves the court to instruct the jury to find a verdict for the defendant on the ground that the plaintiff has failed to prove facts sufficient to constitute a cause of action.

THE COURT: Does the defendant rest, likewise?

MR. EMERY: I understand we have a right to make this motion before we rest and challenge the sufficiency of the evidence.

THE COURT: You may make a motion for a non-suit.

MR. EMERY: Well; very well; I will at this time then move the court to non-suit the plaintiff on the ground that he has failed to prove facts sufficient to constitute a cause of action. The plaintiff has confirmed the evidence that he has no right to a commission in this case; no contract which he could enforce for a commission. I assume the plaintiff is Thomas Winsor. The action is brought in the name of Mr. Shields; for what reason I do not know.

THE COURT: Shall I excuse the jury?

MR. EMERY: It is immaterial, your honor. If counsel would like to have the jury excused, I have no objection.

THE COURT: (To the jury.) You may be excused.

(Jury retires.)

MR. EMERY: The plaintiff brought this action in the first instance to recover a commission under the contract, exhibit A, which is set out in the amended complaint, but counsel eventually discovered by the decisions of our Supreme Court on the question of fraud, that such an action could not be maintained, and, therefore, applied for leave to amend his complaint, and set up an entirely different cause of action, to-wit: a cause of conversion under the contract.

(Counsel for defendant continues argument on motion which is replied to by counsel for plaintiff, and closing argument is made by counsel for defendant.)

THE COURT: From the testimony, the plaintiff's right of recovery in this case must be predicated upon the agreement which bears date of August 23rd, 1911.

This agreement makes another memoranda of even date, executed between the defendant company in this case, and F. P. Kellogg, a part of it, by reference thereto. I think the recitals in the agreement in which the plaintiff in this case, or his assignor, Mr. Thomas Winsor, was a party, would take the case out of the statute of frauds as defined by the Legislature of Washington, where it is provided in substance that any contract for the sale of real estate or any agreement, contract or promise with reference thereto shall be void unless such agreement or promise or some note or memoranda thereof be in writing or signed by the party to be charged, or by some person thereunto lawfully authorized. That is to say, it refers to paragraph 5 of the section of the act where it provides that an agreement authorizing an agent or broker to sell or purchase real estate upon compensation or commission, and then provides what shall be set out in the authorization before it can support an action for a commission. This contract here pre-supposes a consummation, a consummated arrangement that all of the acts defined there have been, so far as the testimony is concerned, carried out, and the contract is really an executed one, and the contract said the stock has been issued pursuant to the arrangement between the parties, and that this stock has been converted to the use of the defendant. The memoranda entered into between Kellogg and the defendant company recites what shall be done in the organization of the corporation which was contemplated and likewise provides for the payment to the defendant of the consideration for the land in issue here. It provides for



compensations that were to be paid to Mr. Kellogg for his work in the operation and management of the concern that was to be organized and which was to handle the output from the land of the defendant company until it became the property of Mr. Kellogg. The testimony shows that Mr. Kellogg did not pay anything himself for this property. It shows further, and it is conceded that the terms and conditions of that agreement were not carried out. They were abandoned and a new plan was adopted by the parties afterwards.

I do not think that that would be material in this case, in view of the fact that the plaintiff in this case got the parties together, and, if the plan which was adopted was substantially the same as the original plans, the plaintiff in this case would be entitled to his compensation, if he was the agency which brought the parties together, and if the parties carried out the agreement which was entered into as understood by the parties.

Now, when I read this memoranda that was signed by all these parties, there is one thing that immediately challenges my attention, and that is the pen interlineation made. In the minds of the parties there was something originally omitted from the memoranda, and which was before the minds of the parties at the time, and it was a matter which was considered very material at the time, and that is this insertion after the word "agreed," following the words, "The Columbia River Lumber Company has agreed." Then follows this insertion, "In the event of said Kellogg's carrying out completely the said proposed sale," and then the writing as originally pre-

pared continues, "to pay as a commission for perfecting said sale the sum of \$15,000," and then follows the interlineation again, "In manner and form following," and then follows the way and manner in which this shall be paid, and provides for the depositing of the stock of the Company in the Union Trust Company to be held for the use—

MR. EMERY: For the benefit.

THE COURT: For the benefit of Winsor and likewise for the benefit of R. H. Steeves; \$10,000 for Winsor, and \$5,000 for Steeves. Now, then, this stock was not to be paid to these parties. If it had been considered they were entitled to anything at that time, the stock would have been delivered to the parties instead of putting it in the Union Trust Company. But there was still something to follow, and what was to follow was simply what is interlined there, the carrying out of the proposed sale by the payment of the money, and then the Union Trust Company was authorized to pay to these parties, not the stock, but the money, when it was paid by Kellogg. Now, then, in the memoranda that was made by Winsor, on May 7th, 1912, he says that he is willing that the Columbia River Lumber Company shall hold the stock instead of the Union Trust Company, and, therefore, the testimony shows here, I conclude that the Columbia River Lumber Company has this stock and is still holding it, and Mr. Kellogg has stated he hasn't paid anything and he can't pay anything; that he has abandoned the property; that he was short of funds in the operation of the concern, and needed more funds, and the parties declined

to advance him more funds, and that then it was concluded that he better surrender all of the property, which he did, and did not receive anything for it, never received a cent for it; never put in a cent and never got a cent out, except he was paid the compensation provided for in this agreement. Now, then, much emphasis has been placed upon the fact that this Company was called the Kellogg Company, and the land was sold to the Kellogg Lumber Company, which is carrying out the original plan. Now, the testimony does not appear to bear out that construction. The only fact that could possibly suggest such a conclusion is the fact that it is now the Kellogg Lumber Company. It would be immaterial whether this Company was the Kellogg Lumber Company or another lumber company. The rights of the plaintiff would not be any greater than if it was called the Thompson Lumber Company—

MR. EMERY: Or Selover Lumber Company.

THE COURT: Yes, or Thompson Lumber Company, or anything else, because the defendant company owns all of the stock. It even owns the one share given to Mr. Kellogg to qualify him to act as the trustee. He says the stock was issued to him and he endorsed it and delivered it back to the company.

Now, I could not instruct the jury upon any proposition of law known to me which would authorize a recovery in this case. It would simply be authorizing the plaintiff to recover in this case because the defendant organized or permitted to be organized or permitted the organization of a company to hold these properties and

appointing Mr. Kellogg to manage and operate the concern, and paying for it, and giving him the opportunity of buying the preferred stock of the concern, and that would be all. Defendant company still owns all of the property, the same as it did before, except it holds it in another form or name. I do not think, under the evidence in this case, that the plaintiff is entitled to anything. I appreciate the plaintiff has done much service, but the court cannot make contracts. Here is a contract that is definite and clear, and while there might have been some doubt as to its meaning, the direct expression is inserted by pen, which says, when these matters shall be paid and shall be paid only on the completion and carrying out of the plan or arrangement. I think the motion must be granted. You may call in the jury.

(Whereupon the jury returns to box.)

THE COURT: I might add that I think the Bishop case, in the 17th Washington, is clearly distinguishable from the facts in this case. There the parties made a sale, and the buyer paid a part of the consideration himself, and entered into the operation of the property, and made the payments from the output of the mine, as the ywere made, and, afterwards, the parties agreed upon another disposition for a valuable consideration, which was satisfactory to both, wherein the money was paid and passed between the parties themselves, rather than through the bank, and the court rightly held in that case that the parties could not in that sort of fashion defeat the party from receiving consideration for services rendered. But this case is entirely different in that

the defendants here still have the property, always have had the property, but only in another form; always had the management of it, and always had all of the stock.

(To the jury.) You, gentlemen of the jury, are instructed that the defendant, having moved for non-suit in this case, upon the ground there is no sufficient evidence on which to predicate a verdict, the court has granted the motion. There is no evidence in this case, as I construe the law, that could support a verdict for any sum, and you are therefore excused from further consideration of this case, and until ten o'clock tomorrow morning.

MR. THOMPSON: We except, of course, to the ruling of the court, and I think counsel will agree to a short form of order.

THE COURT: The proper form would be on motion for a new trial.

MR. THOMPSON: Yes, we will come in this afternoon.

MR. EMERY: It will be impossible for me to be here this afternoon, your honor.

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State of Washington, County of King, ss.

I, JEREMIAH NETERER, Judge of the District Court of the State of Washington, in and for the Northern District, Western Divisions, being the Judge before whom the above entitled cause was tried, do hereby certify,



That the matters and proceedings embodied in the foregoing Bill of Exceptions are matters and proceedings which occurred in said cause, and the same are hereby made a part of the record herein.

I do further certify that the same contains all of the material facts, matters and proceedings heretofore occurring in said cause, and upon the trial thereof, and not already a part of the record in said cause.

I do further certify that the foregoing Bill of Exceptions contains all of the evidence and testimony introduced on the trial of said cause, together with all objections and exceptions, made and taken to the admission or exclusion of testimony, and all motions, offers to prove, and admissions and rulings thereon; and that plaintiff's exhibits, numbered from 1 to 22 inclusive, are to be and are hereby attached, and are all the exhibits introduced upon the trial of said cause, and said exhibits numbered 1 to 22 inclusive, are ordered to be hereto attached, and they are by this order made a part of this Bill of Exceptions.

Counsel for plaintiff and defendant being present and concurring.

Done in open court this 12th day of September, 1914.

JEREMIAH NETERER,

Judge.

Indorsed: Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Sept. 14, 1914. Frank L. Crosby, Clerk. By Deputy.



United States District Court, Western Division of Washington, Northern Division.

THOMAS M. SHIELDS,

*Plaintiff,*

*vs.*

COLUMBIA RIVER LUMBER COMPANY, a Corporation,

*Defendant.*

F. P. KELLOGG,

*Intervenor.*

No. 2527

### ASSIGNMENT OF ERRORS.

Now comes Thomas M. Shields, plaintiff in the above entitled cause, and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above entitled cause, which appeal from this Honorable Court was made on the 24th day of December, 1914.

#### I.

That the United States District Court for the Western District of Washington, Northern Division, erred in sustaining the motion of the defendant for non-suit and for the dismissal of the cause over the objection and exception of the plaintiff, and for granting the order and judgment of dismissal of the said cause.

#### II.

That the said United States District Court for the Western District of Washington, Northern Division, erred in overruling the plaintiff's motion for a new trial of said cause.

Wherefore, this plaintiff prays that said judgment be reversed, and that said District Court for the Western District of Washington, Northern Division, be ordered

to enter a decree reversing the decision of the lower court in said cause.

EDGAR S. HADLEY,

WILL H. THOMPSON,

Attorneys for Plaintiff in Error.

Indorsed: Assignment of Errors. Filed in the U. S.

District Court, Western Dist. of Washington, Northern Division, Dec. 24, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

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*United States District Court, Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,

*vs.*

COLUMBIA RIVER LUMBER COMPANY, a Corporation,

F. P. KELLOGG,

*Plaintiff,*

*Defendant.*

*Intervenor.*

No. 2527

**PETITION FOR WRIT OF ERROR.**

Comes now Thomas M. Shields, the plaintiff in the above entitled action, and respectfully petitions this Honorable Court and the Honorable Jeremiah Neterer, Judge of said Court, for a writ of error in said cause to the United States Circuit Court of Appeals, Ninth Circuit, hereby respectfully showing to the Court and the said District Judge, that the above named Thomas M. Shields, feeling aggrieved by the judgment of dismissal rendered and entered in the above entitled cause on the 23rd day of July, 1914, desires to transfer said cause on said writ of error to the Circuit Court of Appeals for said Ninth

Circuit, for the reasons set forth in the assignment of errors filed herewith, which said assignment of error embraces the following:

1. That the United States District Court for the Western District of Washington, Northern Division, erred in sustaining the motion of defendant for non-suit and for the dismissal of the cause over the objection and exception of the plaintiff and for granting order and judgment of dismissal of said cause.

2. That said United States District Court for the Western District of Washington, Northern Division, erred in overruling plaintiff's motion for a new trial of said cause.

He prays that said Writ of Error be allowed, and that citation be issued as provided by law, and that a transcript of the record proceedings upon which this decree is based, duly authenticated, be sent to the Circuit Court of Appeals for the Ninth Circuit, sitting at Seattle, Washington, under the rules of such court in such cases made and provided, and your petitioner further prays that the proper order relating to the required security to be required of him be made.

THOMAS SHIELDS,

Plaintiff.

EDGAR S. HADLEY and

WILL H. THOMPSON,

Attorneys for Plaintiff.

Indorsed: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*United States District Court, Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,	) Plaintiff, ) ) Defendant. ) Interrenor.	No. 2527
<i>vs.</i>		
COLUMBIA RIVER LUMBER COMPANY, a Corporation,		
F. P. KELLOGG,		

**ORDER ALLOWING WRIT OF ERROR.**

This 22nd day of January, 1915, comes plaintiff by his attorneys, and files herein and presents to the court his petition and praying for the allowance of a writ of error to the United States Circuit Court of Appeals, Ninth Judicial Circuit, an assignment of errors intended to be urged by them, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises. On consideration whereof the court does allow the writ of error upon plaintiff's giving a bond, according to law, in the sum of \$400.

JEREMIAH NETERER,

Judge of the U. S. District Court, Western District of Washington, Northern Division.

Indorsed: Order allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the United States District Court, Western District of  
Washington, Northern Division.*

THOMAS M. SHIELDS,

*Plaintiff.*

*vs.*

COLUMBIA RIVER LUMBER COM-  
PANY, a Corporation,

*Defendant.*

F. P. KELLOGG,

*Intervenor.*

No. 2527

**BOND.**

KNOW ALL MEN BY THESE PRESENTS: That we, Thomas Shields, as principal, and Philip Winsor, W. C. Casler and Luella Casler, as sureties, of Seattle, State of Washington, are held and firmly bound unto the Columbia River Lumber Company, a corporation, in the sum of Four Hundred Dollars (\$400.00), lawful money of the United States, to be paid to the said Columbia River Lumber Company, its successors or assigns, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, by these presents.

Sealed with our seals and dated this 21st day of January, 1915.

Whereas the above named Thomas M. Shields has prosecuted a writ of error to the United States Circuit Court or Appeals, Ninth Circuit, to reverse the judgment of the District Court for the Western Division of Washington, Northern Division, in the above entitled cause.

Now, therefore, the condition of this obligation is such that if the above named Thomas Shields shall prose-

cute his said appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

THOMAS SHIELDS,  
PHILIP WINSOR,  
C. W. CASLER,  
LUELLA CASLER.

State of Washington, County of King, ss.

On the 21st day of January, 1915, personally appeared before me Philip Winsor, C. W. Casler and Luella Casler, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said Philip Winsor, Luella Casler and C. W. Casler being respectively by me duly sworn, says, each for himself, and not one for the other, that he is a resident of said County of King, State of Washington, and that he is worth the sum of \$400.00 over and above his just debts and legal liability and property exempt from execution.

THOMAS SHIELDS,  
PHILIP WINSOR,  
C. W. CASLER,  
LUELLA CASLER,

Subscribed and sworn to before me this 21st day of January, A. D. 1915.

R. W. GROVER,

Notary Public in and for the State of Washington, residing at Seattle.

(Seal.)



This bond is approved both as to sufficiency and form this 22d day of January, 1915.

JEREMIAH NETERER,  
Judge.

Indorsed: Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*United States District Court, Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,

*Plaintiff,*

*vs.*

COLUMBIA RIVER LUMBER COMPANY, a Corporation,

*Defendant.*

F. P. KELLOGG,

*Intervenor.*

No. 2527

**ORDER.**

It appearing by the stipulation that the parties to this action on appeal have agreed that the exhibits shall be forwarded to the Circuit Court of Appeals, Ninth Judicial Circuit, in connection with the transcript of record.

It is now therefore ordered and the Clerk is hereby directed to forward to the Circuit Court of Appeals, Ninth Judicial Circuit, in this action, all exhibits therein along with the transcript of record.

Done this 22nd day of January, A. D. 1915, at Seattle, Washington.

JEREMIAH NETERER,

United States District Judge for the Western District of Washington, Northern Division.

Indorsed: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>Plaintiff,</i>	
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	} Defendant.

**CERTIFICATE OF CLERK U. S. DISTRICT COURT TO  
ORIGINAL EXHIBITS.**

United States of America,      } ss.  
Western District of Washington, }

I, Frank L. Crosby, Clerk of the District Court of the United States, for the Western District of Washington, do hereby certify that the hereto attached sealed package contains the original exhibits introduced and used upon the hearing and trial of the above entitled cause, as follows: Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, which said original exhibits are herewith transmitted to the Circuit Court of Appeals, there to be inspected and considered, together with the transcript of the record on appeal in the above entitled cause; which said exhibits are so transmitted pursuant to the order of the said District Court, so directing, a copy of which said order will be found on page 173 of the record on appeal in said above entitled cause.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Seattle, in said District, this 13th day of March, 1915.

(Seal.) FRANK L. CROSBY,

Clerk.

*United States District Court, Western District of Wash-  
ington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>Plaintiff.</i>	
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
<i>Defendant.</i>	

**ORDER ENLARGING TIME TO TRANSMIT RECORD.**

Now, on this 23d day of January, 1915, upon motion of attorneys for plaintiff, and for sufficient cause appearing, it is ordered that the time within which the Clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 22d day of March, 1915.

JEREMIAH NETERER,

District Judge.

Indorsed: Order Enlarging Time to Transmit Record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the United States District Court, Western District of  
Washington, Northern Division.*

THOMAS H. SHIELDS,

*Plaintiff.*

*vs.*

COLUMBIA RIVER LUMBER COM-  
PANY, a Corporation,

*Defendant.*

F. P. KELLOGG,

*Intervenor.*

No. 2527

**WRIT OF ERROR.**

United States of America, Ninth Judicial Circuit, ss.

The President of the United States of America to  
the Honorable Judges of the District Court of the United  
States for the Western District of Washington, Northern  
Division, Greeting:

Because in the record and proceedings, as also in the  
rendition of the judgment, of a plea which is in said  
Circuit Court before you, or some of you, between Thomas  
Shields, plaintiff in error, and the Columbia River Lum-  
ber Company, defendant in error, a manifest error hath  
happened to the great damage of the said Thomas Shields,  
plaintiff in error, as by his complaint appears, we, being  
willing that error, if any hath been done, should be duly  
corrected and full and speedy justice done to the parties  
aforesaid in this behalf, do command you, if judgment be  
therein given, that then under your seal distinctly and  
openly, you send the record and proceedings aforesaid,  
with all things concerning the same, to the United States  
Circuit Court of Appeals for the Ninth Circuit, together  
with this writ, so that you have the same at the City of  
San Francisco, State of California, in said circuit, within  
thirty (30) days from the date hereof, in said Circuit

Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable E. D. White, Chief Justice of the United States, this 21st day of January, 1915.

Attest:

FRANK L. CROSBY,

Clerk of the District Court of the United States for the Western District of Washington, Northern Division.

(Seal.)

By ED M. LAKIN, Deputy.

Indorsed: (Copy.) No. 2527. In the District Court of the United States for the Western District of Washington, Northern Division. Thomas Shields, plaintiff, vs. Columbia River Lbr. Co., defendant. F. P. Kellogg, intervenor. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>Plaintiff.</i>	
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
	<i>Defendant.</i>
F. P. KELLOGG,	<i>Intervenor.</i>

**CITATION.**

U. S. of America, ss.

The President of the United States to the Columbia River Lumber Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, Ninth Circuit, to be held at the City of San Francisco in the State of California, within thirty (30) days from the date hereof pursuant to an order allowing a writ of error, and the writ of error duly issued and now on file in the office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Thomas Shields is plaintiff in error and you are defendant in error, and show cause, if any there be, why the judgment entered against said plaintiff in error, as in said order allowing writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Jeremiah Neterer, United States District Judge for the Western District of Washington, Northern Division, this 22d day of January, 1915, and of



the Independence of the United States the one hundred and thirty-eighth.

(Seal.)

JEREMIAH NETERER,

United States District Judge for the Western District of Washington, Northern Division.

Service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this 22d day of Jany., 1915.

GEO. D. EMERY,

Attorney for Defendant.

Indorsed: (Copy) No. 2527. In the District Court of the United States, for the Western District of Washington, Northern Division. Thomas Shields, Plaitniff, vs. Columbia River Lbr. Co., Defendant. F. P. Kellogg, Intervenor. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

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*United States District Court, Western District of Washington, Northern Division.*

THOMAS M. SHIELDS,

*Plaintiff.*

*vs.*

COLUMBIA RIVER LUMBER COMPANY, a Corporation,

*Defendant.*

F. P. KELLOGG,

*Intervenor.*

No. 2527

### ACKNOWLEDGMENT OF SERVICE.

This is to certify that I have this day received of Edgar S. Hadley, one of the attorneys for the plaintiff in error in the above entitled cause, a copy of the writ

of error and petition therefor, assignment of error and citation in error.

GEO. D. EMERY,

Attorney for the Defendant.

Indorsed: Acknowledgment of Service. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

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*United States District Court, Western District of Washington, Northern Division.*

THOMAS H. SHIELDS,

*Plaintiff.*

*vs.*

COLUMBIA RIVER LUMBER COMPANY, a Corporation,

*Defendant.*

F. P. KELLOGG,

*Intervenor.*

No. 2527

### STIPULATION.

It is hereby stipulated by and between counsel for plaintiff in error and counsel for defendant in error that there shall be embraced in the printed records the following matters:

1. Amended Complaint.
2. Answer of Columbia River Lumber Co.
3. Reply thereto.
- 3-a. Stipulation that F. P. Kellogg may dismiss his Complaint.
- 3-b. Order of Dismissal.
4. Impaneling of Jury.
5. Motion for Non-Suit.

6. Ruling thereon by the Court.
7. Opinion of the Court.
8. Motion for New Trial.
9. Order Overruling New Trial.
10. Judgment of Dismissal.
- 10-a. Stipulation Extending Time to Prepare Bill of Exceptions.
- 10-b. Order Allowing Extension of Time.
- 10-c. Stipulation Extension of Time to Prepare Bill of Exceptions.
- 10-d. Order Allowing Extension of Time.
11. Bill of Exceptions.
12. Assignment of Error.
13. Petition for Writ of Error.
14. Allowance of Writ of Error.
15. Writ of Error.
16. Citation in Error.
17. Bond and Approval.
18. Acceptance of Service of Copy of Writ of Error, Petition Therefor, Assignment of Error.
19. This Stipulation.
20. Clerk's Certificate.
21. All Exhibits are to be lodged in the Circuit Court of Appeals, 9th Dist., with the transcript of record.
22. Order Dismissing Complaint in Intervention.
23. Order to Send Up Original Exhibits.

It is understood by counsel that by this stipulation counsel for defendant does not waive any right that he may have to object to this appeal.

Dated at Seattle, Washington, this 22nd day of January, 1915.

EDGAR S. HADLEY and  
WILL. H. THOMPSON,  
Attorneys for Plaintiff.  
GEO. D. EMERY,  
Attorney for Defendant.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the District Court of the United States for the Western  
District of Washington, Northern Division.*

THOMAS M. SHIELDS,	} No. 2527
<i>vs.</i>	
COLUMBIA RIVER LUMBER COM- PANY, a Corporation,	
<i>Defendant.</i>	

**CERTIFICATE OF CLERK U. S. DISTRICT COURT TO  
TRANSCRIPT OF RECORD.**

United States of America	} ss.
Western District of Washington	

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 182 printed pages, numbered from 1 to 182 inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Ap-

peals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return of said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs fees and charges incurred and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making	
record, certificate or return, 454 folios at 15c---	\$ 68.10
Certificate of Clerk to Transcript of Record—4	
folios at 15c-----	.60
Seal to said Certificate-----	.20
Certificate of Clerk to Original Exhibits—3 folios	
at 15c-----	.45
Seal to said Certificate-----	.20
Statement of cost of printing said transcript of	
record, collected and paid-----	154.40
<hr/>	
Total -----	\$223.95

I hereby certify that the above cost for preparing and certifying record, amounting to \$223.95, has been paid to me by Messrs. Edgar S. Hadley and Will H. Thompson, Attorneys for Plaintiff in Error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

In witness whereof I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 13th day of March, 1915.

(Seal.)

FRANK L. CROSBY, Clerk.